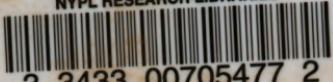

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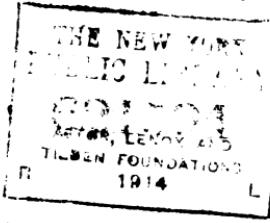
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THE
PENAL COL
OF
THE STATE OF TEXAS.

ADOPTED BY THE SIXTH LEGISLATURE.

GALVESTON:
PRINTED AT THE NEWS OFFICE.

1857.



[REDACTED] In pursuance of an Act of the Legislature of Texas, of February 11, 1854, JOHN W. HARRIS, Esq., O. C. HARTLEY, Esq., and the undersigned, were appointed Commissioners to prepare a Code, amending, revising, digesting, supplying and arranging the Laws, civil and criminal, of the State. They submitted to the Legislature, at the session of 1855-6, as a part of their labors, a Penal Code and a Code of Criminal Procedure. The former was adopted with very material amendments, the latter with slight amendments, at the adjourned session of the Legislature, which convened in July, 1856. The Act which provided for the publication of these Codes authorized the Governor to appoint some person to superintend their publication and prepare an Index. The undersigned received the appointment. It may not be improper to say that many inaccuracies were found in the enrolled copy of the Codes, more particularly in that of the Penal Code.

This arises from the fact that the bills were enrolled at a late period of the session ; many clerks were engaged in it, and there was not sufficient time to supervise with care the enrollment of the Acts.

Some of these inaccuracies are pointed out in a note at the end of each Code. They consist of errors in the numbering of Articles, and it fortunately happens that the references in the body of Articles are correct and point out properly those referred to. No confusion therefore will result from the errors committed.

JAMES WILLIE.

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THE PENAL CODE.

AN ACT

**TO ADOPT AND ESTABLISH A PENAL CODE, FOR
THE STATE OF TEXAS.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS :

SECTION 1. This Code is hereby adopted, and shall be known as the Penal Code.

PART I.

GENERAL PROVISIONS RELATING TO THE WHOLE CODE.

TITLE I.

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

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

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

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

Annotated ART. 4. When the definition of an offence made penal by the law of this State is *merely* defective, the rules of the common law shall apply and be resorted to, for the purpose of aiding in the interpretation of such penal enactment.
Art. 156

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

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

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

ART. 8. It is also declared to be the duty of the Attorney General to call the attention of the Legislature in his reports which are required by law to be made to the Governor, to any defects or omissions in the penal law which he may observe, and in like manner the District Attorneys shall communicate to the Attorney General such suggestions as they may deem important touching the same subject.

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

ART. 10. Words which have their meaning specially defined, shall be understood in that sense, though it be contrary to their usual meaning.

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

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

ART. 13. No law of the Legislature defining an offence,

or affixing a penalty thereto, shall take effect until after the expiration of sixty days from the day of the adjournment of the session at which such penal law was enacted. After a law has taken effect, no person shall be excused for its violation, upon the ground that he was ignorant of its provisions.

ART. 14. When the penalty for an offence is prescribed by one law, and is altered by a subsequent law, the penalty of such second law shall not be inflicted for a breach of the law committed before the second shall have taken effect. In every such case the offender shall be tried under the law in force when the offence was committed, and if convicted, punished under that law ; except that when by the provisions of the second law, the punishment of the offence is ameliorated, the defendant shall be punished under such last enactment, unless he elect to receive the penalty prescribed by the law in force when the offence was committed.

ART. 15. The repeal of a penal law, where the repealing statute substitutes no other penalty, will exempt from punishment all persons who may have offended against the provisions of such repealed law, unless it be otherwise declared in the repealing statute.

ART. 16. When by the provisions of a repealing statute a new penalty is substituted for an offence punishable under the Act repealed, such repealing statute shall not exempt from punishment a person who has offended against the repealed law while it was in force, but in such case the rule prescribed in Article 14 shall govern.

ART. 17. If an offence be defined by one law, and by a subsequent law the definition of the offence is changed, no such change or modification shall take effect as to offences already committed ; but all offenders against the first law shall be tried, and their guilt or innocence determined in accordance with the provisions thereof.

ART. 18. No offence committed, and no fine, forfeiture, or penalty incurred under existing laws, previous to the time when this Code takes effect, shall be affected by the repeal herein, of any such existing laws, but the punishment of such offences and the recovery of such fines and forfeitures shall

CHAPTER VII.

DUTIES OF THE PHYSICIAN.

ARTICLE 130. It is the general duty of the Physician to visit the Penitentiary at least twice in each week, for the purpose of ascertaining the condition of the health of each convict, and he shall report once in three months or oftener if required, to the Directors, the sanitary condition of the Penitentiary.

ART. 131. He shall attend immediately upon any case of sickness among the convicts, of which he is notified by the Superintendent or Underkeeper.

ART. 132. He shall examine into the state of health of each prisoner brought to the Penitentiary, before he has been confined in his cell.

ART. 133. He shall notify the Superintendent of each case; in which on account of ill-health, it may be deemed advisable to remove a prisoner from the Penitentiary to some other place.

ART. 134. The Physician shall inquire into the mental as well as bodily condition of each convict, and give such advice to the Superintendent as he may deem proper respecting the treatment of all prisoners who may appear to be materially affected either in body, or mind, by any particular mode of treatment, and shall make all proper suggestions, touching an alteration in the mode of treatment in any particular case.

ART. 135. He shall cause any one suffering under a contagious or infectious disease to be removed, so that other prisoners may not suffer by such contagion or infection, and the directions of the Physician shall be followed by the Superintendent in all such cases.

ART. 136. When, under Article 134, any particular mode of treatment has been suggested by the Physician to the Superintendent the same shall be followed by him, or he shall report thereon to the Directors for their decision, and shall be governed by their opinion.

ART. 137. If directions be given by the Physician for the removal from the Penitentiary of any person suffering under

a contagious or infectious disease, such directions shall be followed and the diseased person removed to some other place, until he shall have died or is restored to health.

ART. 138. Convicts when sick shall be kept in the apartment constructed as a Hospital by the original plan of the Penitentiary, except when under the advice of the Physician their removal to some other place may become necessary.

ART. 139. The Hospital, and all persons employed therein, shall be under the management and control of the Physician.

ART. 140. The Physician shall keep a journal, in which he shall regularly enter opposite the name of each prisoner the state of his health, and, if sick, with what disease, and whether he remains within the Penitentiary or has been removed, together with such remarks as he may deem important, which book shall be open at all times for the inspection of the Superintendent and Directors.

ART. 141. The treatment prescribed by the Physician for prisoners suffering with disease shall, in all cases, be followed, and only such diet given as is allowed by him.

ART. 142. A prisoner suffering under a dangerous disease shall not be discharged, except by his own request, while in that condition, though his term of confinement may have expired.

CHAPTER VIII.

DUTIES OF CHAPLAIN.

ARTICLE 143. The Chaplain shall preach at least once on every Sunday to the convicts.

ART. 144. He shall visit the prisoners at convenient times in the day during their hours of leisure, and is expected to use all the influence he may possess to inculcate sound principles of religion and morality.

ART. 145. He may furnish the convicts with such books on moral subjects as are approved by the Directors.

ART. 146. He may visit prisoners in case of sickness, by permission of the Physician, and shall always be admitted to see and converse with any convict who has been pronounced by the Physician as beyond reasonable hope of recovery.

ART. 147. It is the duty of the Chaplain, in his discourses or conversations with prisoners, to refrain from discussing doctrines merely sectarian, and to teach such pure principles of religion and morality as belong to the creed of all Christian Churches.

ART. 148. Preachers, Ministers and Priests, of all religious denominations, shall, by consent of the Directors, have access to the Penitentiary, and may, by consent of the Chaplain, preach to the convicts.

ART. 149. A convict who is a believer in any particular form or doctrine of religion shall at his own request, at all proper times, be permitted to receive visit from any preacher, minister, or priest, whom he may desire to see.

CHAPTER IX.

OF OVERSEERS AND OTHER SUBORDINATE OFFICERS AND EMPLOYEES.

ART. 150. Overseers may be employed as directed in this Title to superintend any particular branch of business, carried on by the labor of convicts, or when, from the number of convicts it becomes necessary, they may be employed for the purpose of preserving discipline and securing the safe custody of prisoners.

ART. 151. They shall obey the orders of the Superintendent and Underkeeper, and may complain to the Directors of any ill treatment they may receive from those officers.

ART. 152. Such number of Guards as are deemed necessary may be appointed to preserve discipline, and prevent escapes of convicts. They shall be subject to the orders of the Superintendent and Underkeeper, and any complaint of ill treatment may be made by them to the Directors.

ART. 153. No overseer or Guard shall be present when a prisoner is visited by either of the Directors, the Superintendent or the Underkeeper, for the purpose of inquiring into the manner in which the convicts are treated.

CHAPTER X.

OF THE TREATMENT OF CONVICTS AND OF PRISON DISCIPLINE.

§ I.

General Rules.

ARTICLE 154. Every convict when received into the Penitentiary shall be carefully searched and deprived of every article by which an escape might be effected. If money be found upon the person of a convict it shall be delivered by the Superintendent to the board of Directors, and by them be safely kept until the discharge of such prisoner (if he has no wife or children) and upon his discharge shall be re-delivered to him, but if the prisoner has a wife or children, the money shall be transmitted to them by the Directors.

ART. 155. The state of health of the convict shall also be examined by the Physician as directed in Chapter VII of this Title.

ART. 156. The clothes of each convict shall be carefully preserved by the Superintendent during the time of his confinement, and upon his discharge shall be re-delivered to him;

and the Superintendent shall give to each convict, on his discharge, twenty dollars, if said convict is without money, and otherwise unprovided for.

ART. 157. The description of each convict when received in the Penitentiary, the name, if known, sex, age, height, color of the eyes and hair, place of nativity and previous occupation, if ascertained, time of conviction, nature of the crime and period of confinement, shall be entered in a book kept by the Superintendent.

ART. 158. All prisoners confined in the Penitentiary are to be treated with humanity, to be provided with suitable clothing of substantial material and with proper diet, but ardent, malt or vinous liquors, are not to be allowed except when prescribed by the attending Physician.

ART. 159. The various provisions of this Code are designed to secure to the convicts moral instruction, to provide for their health and extend to them such comforts as are consistent with their situation, and at the same time to require of them a due attention to their various occupations, and a strict observance of the discipline, rules and regulations of the prison.

ART. 160. Prisoners who have been reported by the Physician as in a condition of health which requires their removal to some other place, shall be accordingly removed, but in such manner and under such restrictions as will prevent escape.

ART. 161. No conversation shall be allowed between convicts except as a reward for good conduct, and while at work together they shall be allowed to speak to each other only when necessary to carry on the labor in which they are engaged, and convicts of different sexes shall at all times be kept separate and apart.

ART. 162. The convicts shall be dressed in clothing of uniform make and of coarse but comfortable material, and suited to the season of the year.

ART. 163. Food of healthy and substantial kind shall be furnished to the convicts; they may be placed upon lighter diet as a punishment for refractory conduct.

ART. 164. Convicts who are unable to read when admitted to the Penitentiary, may receive such instruction during hours of leisure as the Chaplain may see proper to give, and for the purpose of aiding in this duty, a teacher may be employed by the Directors.

§ II.

Of Visits to the Penitentiary.

ARTICLE 165. The Governor, Lieut. Governor, Judges of Courts, Magistrates, all other offices connected with the Judiciary, and members of the Legislature have a right to visit the Penitentiary and shall always at proper hours be admitted for the purpose of observing the manner in which the Penitentiary is conducted.

ART. 166. The Superintendent or any Director may give permission to other persons to visit the Penitentiary.

ART. 167. No conversation shall be held with a convict by any visitor other than the Governor, except by permission of the Superintendent.

ART. 168. The Governor may hold conversations with prisoners apart from the Superintendent or any other officer,

ART. 169. The rules prescribed in the foregoing Articles of this Chapter apply to prisoners under whatever term of sentence and in whatever manner they are directed by law to be confined, but these rules shall be controlled by others made specially applicable to particular cases.

CHAPTER XI.

OF SOLITARY CONFINEMENT FOR LIFE.

ARTICLE 170. Prisoners sentenced to solitary confinement for life, shall be strictly confined to their cells. They may, in the discretion of the Directors, be permitted to labor at intervals during their confinement.

ART. 171. They shall receive no visits except from the Governor of the State, the Directors, Superintendent and other officers of the penitentiary, including the Physician and Chaplain.

ART. 172. They may read such selections from the Bible or other works of moral instruction as may be furnished by the Chaplain.

ART. 173. Such change may be made with regard to the dress of convicts of this class, as the Directors may think proper.

ART. 174. The cell in which a prisoner is confined for a crime punishable by solitary imprisonment for life, shall be painted black upon the outside, and some appropriate inscription shall be painted thereon, in plain letters, setting forth the name and age of the offender, the time and place of his conviction, and the crime of which he was found guilty, and that he is enduring, in solitary confinement, the penalty for his crime.

CHAPTER XII.

OF PRISONERS CONFINED TO LABOR FOR LIFE OR A TERM OF YEARS.

ARTICLE 175. This class of persons are to be kept at labor from day-light until twenty minutes before sunset, with the exceptions stated in the succeeding Articles.

ART. 176. No labor shall be required of a convict on Sunday.

ART. 177. There shall be allowed an interval of one hour's rest at breakfast, and an hour and a half at dinner.

ART. 178. The particular occupation and employment, in which a convict is to engage, shall be determined by the Superintendent, after consultation with the Directors.

ART. 179. If a prisoner, prior to his conviction, has been engaged in any particular mechanical employment, he shall be set to labor in the same occupation, provided the trade be one which is or may be carried on in the Penitentiary.

ART. 180. No greater amount of labor shall be required of a convict than a due regard to his physical strength and health may render proper.

CHAPTER XIII.

OF THE RULES TO BE PRESCRIBED BY THE DIRECTORS.

ART. 181. The authority given to the Directors of the Penitentiary to establish rules and By-Laws, is intended to supply any defects in the law with regard to prison discipline, and to provide for such details as are not embraced within the rules laid down in this Title.

ART. 182. These rules and By-Laws shall be reported to the Governor whenever adopted, and all changes and amendments as they are made.

ART. 183. The Directors have the same authority to make rules and By-Laws in regard to the House of Correction, as they have with respect to the other department of the Penitentiary.

ART. 184. The rules and By-Laws shall be made with a view to carry out the general principles on which the penal laws are founded, and the designs for which the different systems of imprisonment are established.

ART. 185. The rewards to be bestowed upon convicts who evince a purpose of reformation and a disposition to obey the rules of discipline, shall consist of an extension of social privileges, permission to read, write, and such other mitigations of the severity of punishment as may not be inconsistent with proper discipline. No written communication from a convict, shall, however, in any case, be sent out without the permission of the Superintendent, nor until it has been read by him.

ART. 186. The punishments to be prescribed by the Directors shall consist of closer imprisonment, confinement in irons, deprivation of privileges enjoyed by other prisoners, and punishments of the like kind, but in no case shall whipping be resorted to, nor shall shaving the head of a convict be allowed.

*amended
W. 153.*

TITLE IV.

OF THE HOUSE OF CORRECTION.

CHAPTER I.

ITS ORGANIZATION AND OFFICERS.

ARTICLE 187. There shall be built by the State, convenient, and adjacent to the Penitentiary grounds, a place of confinement to be called the House of Correction.

ART. 188. The Superintendent of the Penitentiary shall be also the Superintendent and principal officer of the House of Correction, and all duties assigned him with respect to the management of the affairs of the Penitentiary are also to be performed in regard to the House of Correction.

ART. 189. The Directors of the Penitentiary shall in like manner be the Directors of the House of Correction; shall exercise all powers and perform all duties in respect to the affairs of the House of Correction, which are prescribed to them in like cases in the control and supervision of the Penitentiary.

ART. 190. The Directors may appoint an Assistant Superintendent, and such subordinate officers and guards as may be deemed necessary, for the proper management of the House of Correction, who shall be paid such compensation as is agreed upon by contract with the Directors.

ART. 191. The appointment of Assistant Superintendent, subordinate officers and guards, shall be made upon the nomination of the Superintendent, under the rules which are prescribed in the preceding Title for the appointment of officers by the Directors.

ART. 192. The Physician and Chaplain of the Penitentiary shall exercise their respective offices as Physician and Chaplain of the House of Correction, and in case it becomes necessary, or is deemed proper, the Directors may appoint an Assistant Chaplain and Physician, upon such terms as they may think reasonable; provided that the compensation of such assistants shall not exceed that allowed the Physician and Chaplain respectively.

ART. 193. The general rules prescribed in the preceding Title, as to the management of the pecuniary affairs of the Penitentiary, shall also apply to the House of Correction.

ART. 194. There shall be appointed by the Directors a teacher, whose duty it shall be to give instruction to the convicts in the House of Correction. The compensation of the teacher shall be fixed by agreement with the Directors.

ART. 195. Competent mechanics shall be chosen by the Directors to give instruction in any branch of mechanical business which may appear to be suited to a convict in the House of Correction.

ART. 196. The duties of Teacher may be performed by

the Chaplain, or Assistant Chaplain, and an additional compensation allowed therefor, by the Directors.

ART. 197. The duties of instructor in mechanical pursuits may be performed by such convicts in the Penitentiary as are qualified, and as may appear to the Superintendents and Directors to be suitable, by having given evidence of sincere reformation.

CHAPTER II.

ITS GENERAL OBJECTS.

ARTICLE 198. The principal design of the House of Correction is to reform and improve the moral condition and character of juvenile offenders.

ART. 199. All officers charged with duties in the management and discipline of the House of Correction, are required to use kind and persuasive measures to produce a reformation of the convicts under their care.

ART. 200. To carry out the objects designed, the Directors may establish rules and by-laws for the government of the persons confined in the House of Correction.

CHAPTER III.

OF DISCIPLINE AND THE TREATMENT OF CONVICTS.

ARTICLE 201. All rules prescribed in the preceding Title for

the humane treatment of prisoners in the Penitentiary, shall equally apply to those confined in the House of Correction.

ART. 202. Three hours of each day shall be devoted to the instruction of convicts in reading, writing, grammar, and arithmetic. Such convicts as are already sufficiently instructed in these, may be taught the higher branches of learning.

ART. 203. One hour at breakfast time, and one hour and a half at dinner, shall be allowed for rest and leisure, from labor or instruction.

ART. 204. The remaining portion of the day, between sunrise and sunset, except Sundays, shall be devoted to labor and instruction in mechanical pursuits.

ART. 205. The Directors have the right to prescribe the kind of books to be used in the instruction of convicts.

ART. 206. All persons engaged in teaching or superintending the instruction of convicts, are expected to inculcate principles of morality, to advise kindly, and exhort convicts to a course of reformation and good behaviour.

ART. 207. The rules prescribed in the preceding Title respecting visits to prisoners by officers or other persons shall apply to convicts in the House of Correction.

ART. 208. The punishment in the House of Correction for refractory conduct shall be the same as in the Penitentiary, except that moderate correction by whipping may be resorted to when necessary, in the case of offenders under the age of fifteen.

ART. 209. Rewards appropriate to the case shall be bestowed upon such as are worthy, which shall be by allowing privileges of social intercourse, the perusal of books, visits from friends, and other like privileges.

ART. 210. As a general rule convicts in the House of Correction shall not converse together, except in the hearing of the Superintendent, Assistant Superintendent, Chaplain, Physician, Teacher, or one of the Directors. Those, however, who manifest an improvement of character, may be allowed social intercourse with each other.

take place as if the laws repealed had still remained in force; except that when any penalty, forfeiture, or punishment shall have been mitigated by the provisions of this Code, such provision shall apply to and control any judgment to be pronounced after this Code shall take effect, for any offence committed before that time, unless the defendant elect to be punished under the provisions of the repealed law.

ART. 19. No penalty affixed to an offence by one law shall be considered as cumulative of penalties prescribed under a former law, and in every case where a new penalty is prescribed for an offence, the penalty of the first law shall be considered as repealed, unless the contrary be expressly provided in the law last enacted.

TITLE II.

DEFINITIONS.

ARTICLE 20. The general terms "*whoever*," "*any person*," "*any one*," and the relative pronouns "*he*" and "*they*" as referring to these terms, include females as well as males, unless there is some express declaration to the contrary. The word "*man*" is used to signify a male person of any age, and the word "*woman*" a female person of any age.

ART. 21. The use of any word expressive of the *relationship*, *state*, *condition*, *office*, or *trust*, of any person, as of "*parent*," "*child*," "*ascendant*," "*descendant*," "*minor*," "*infant*," "*ward*," "*guardian*," or the like, or of the relative pronouns "*he*" or "*they*," in reference thereto, includes both *males* and *females*.

ART. 22. The use of the singular number includes the plural, and the plural the singular, and words used in the masculine gender include the feminine also, unless by reasonable

construction it appears that such was not the intention of the language.

ART. 23. Whenever any property or interest is intended to be protected by a provision of the penal law, and the general term "*person*," or any other general term, is used to designate the party whose property it is intended to protect, the provision of such penal law and the protection thereby given, shall extend to the property of the State, and of all public or private corporations.

ART. 24. The word "*accused*" is intended to refer to any person who in any legal manner is held to answer for any offence at any stage of the proceedings, or against whom complaint in a lawful manner is made, charging the commission of an offence, including all proceedings from the order for arrest to the final execution of the law, and the word "*defendant*" is used in the same sense.

ART. 25. A "*criminal action*" as used in this Code, means the whole, and any part of the procedure which the law provides for bringing offenders to justice, and the terms "*prosecution*," "*criminal prosecution*," "*accusation*," and "*criminal accusation*," are used in the same sense.

ART. 26. An accused person is termed a "*convict*" after final condemnation by the highest court of resort, which by law has jurisdiction of his case, and to which he may have thought proper to appeal.

ART. 27. The term "*criminal process*" is intended to signify any *capias*, *warrant*, *citation*, *attachment*, or other written order issued in a criminal proceeding, whether the same be to arrest, commit to jail, collect money, or for whatever other purpose used.

ART. 28. Except where a word, term, or phrase is specially defined, all words used in this Code are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed.

ART. 29. The word "*preceding*" means the next preceding, and the word "*succeeding*" the next succeeding, whenever used

to designate any particular Article, Chapter, or Title of the Code.

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

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

TITLE III.

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

ARTICLE 32. All free white persons, whether inhabitants of this State, or of the United States, or aliens, are amenable to punishment for offences which are defined and made punishable under the provisions of Part ii. of this Code.

The exceptions to the general rule here laid down, are given in the subsequent Articles of this Title.

ART. 33. Slaves and free persons of color are punishable under the provisions of Part iii. of this Code, which relates specially to offences committed by persons in that condition.

ART. 34. All free persons who have less than one-fourth African blood, come within the meaning of the term "*free white persons*," and all free persons who have that, or a greater proportion of African blood, come within the meaning of the terms, "*free persons of color*."

"*Slaves*" are all such persons of African descent as are held in slavery by the laws of this State, or of any of the States or territories of the United States, or of any foreign country.

ART. 35. No act done within the uninhabited portions of the State, by individuals belonging to the several Indian tribes, in their intercourse with each other, or with other tribes, and affecting no other person, is considered as an offence against this Code, but in all other respects such individuals are upon a footing with free white persons, both as to protection and liability to punishment.

ART. 36. No person shall in any case be convicted of any offence committed before he was of the age of nine years; nor of any offence committed between the years of nine and thirteen, unless it shall appear by proof that he had discretion sufficient to understand the nature and illegality of the act constituting the offence.

ART. 37. A person for an offence committed before he arrived at the age of seventeen years, shall in no case be punished with death, but may, according to the nature and degree of the offence be punished by imprisonment for life, or receive any of the other punishments affixed in this Code, to the offence of which he is guilty.

ART. 38. A married woman who commits an offence by the command or persuasion of her husband, shall not in any case be punished by death, but may be imprisoned for life, or a term of years, according to the nature and degree of the crime, and in cases not capital, she shall receive only one-half the punishment to which she would otherwise be liable.

ART. 39. When it shall appear that a minor was aided or instigated in the commission of an offence, by a relation in the ascending line, or by his guardian, or an apprentice under age, by his master, or a wife by her husband, or a slave by a white person, such relation, guardian, master, husband, or white person, shall at the discretion of the jury in capital cases be punished by death, and in cases not capital shall receive double the punishment imposed by law in ordinary cases for the same offence.

ART. 40. The word minor, as here and elsewhere used in this Code, signifies a person under the age of twenty-one years.

ART. 41. No act done in a state of insanity can be pun-

ished as an offence. No person who becomes insane after he committed an offence, shall be tried for the same while in such condition. No person who becomes insane after he is found guilty shall be punished for the offence while in such condition.

ART. 42. The rules of evidence known to the common law in respect to the proof of insanity, shall be observed in all trials where that question is in issue. The manner of ascertaining whether the insanity is real or pretended, when it is alleged that the defendant became insane after the commission of the offence, is prescribed in Part iii., Title viii., Chapter ii.. of the Code of Criminal Procedure.

ART. 43. A person in the lawful execution of a written process, or verbal order from a Court or Magistrate, is justified for any act done in obedience thereto.

ART. 44. A peace officer is in like manner justified for any act which he is bound by law to perform, without warrant or verbal order.

ART. 45. A person forced by threats, or actual violence to do an act, is not liable to punishment for the same. Such threats, however, must be,

1. Loss of life, or great personal injury.
2. They must be such as are calculated to intimidate a person of ordinary firmness.
3. The act must be done when the person threatening is actually present.

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

ART. 46. No act done by accident is an offence, except in certain cases specially provided for, where there has been a degree of carelessness or negligence which the law regards as criminal.

ART. 47. No mistake of law excuses one committing an offence, but if a person laboring under a mistake, as to a particular fact, shall do an act which would otherwise be criminal, he is guilty of no offence.

ART. 48. The mistake as to fact which will excuse, under

the preceding Article, must be such as that the person so acting under a mistake would have been excusable, had his conjecture as to the fact been correct, and it must also be such mistake as does not arise from a want of proper care, on the part of the person committing the offence.

ART. 49. If one intending to commit a felony, and in the act of preparing for or executing the same, shall, through mistake or accident, do another act, which, if voluntary done, would be a felony, he shall receive the punishment affixed by law to the offence actually committed.

ART. 50. If one intending to commit a felony, and in the act of preparing for or executing the same, shall through mistake or accident do another act, which, if voluntarily done, would be a misdemeanor, he shall receive the highest punishment affixed by law to the offence actually committed.

ART. 51. If one intending to commit a misdemeanor, and in the act of preparing for or executing the same, shall, through mistake, commit an offence which is by law a felony, he shall receive the lowest punishment affixed by law to the offence actually committed.

ART. 52. The intention to commit an offence is presumed whenever the means used is such as would ordinarily result in the commission of the forbidden act.

ART. 53. On the trial of any criminal action, when the facts have been proved which constitute the offence, it devolves upon the accused to establish the facts or circumstances on which he relies to excuse or justify the prohibited act or omission.

PART II.

OF OFFENCES AND PUNISHMENTS.

TITLE I.

DEFINITION AND DIVISION OF OFFENCES.

ARTICLE 54. An offence is an act or omission forbidden by positive law, and to which is annexed on conviction, any punishment prescribed in this Code.

ART. 55. Offences are divided into felonies and misdemeanors.

ART. 56. Every offence which is punishable by death or by imprisonment in the penitentiary either absolutely or as an alternative, is a felony; every other offence is a misdemeanor.

ART. 57. Felonies are either capital or not capital. An offence for which the highest penalty is death, is a capital felony.

ART. 58. An offence, which a Justice of the Peace, or the Mayor, or other officer of a town or city, may try and punish, is called a petty offence.

ART. 59. Offences are again subdivided, and classed as follows. They are,

1. Offences against the State, its territory, property and revenue.

2. Offences affecting the Executive, Legislative, and Judiciary departments of the government.
 3. Offences affecting the right of suffrage.
 4. Offences which affect the free exercise of religious opinion.
 5. Offences against public justice.
 6. Offences against the public peace.
 7. Offences against public morals, decency, and chastity.
 8. Offences against public policy and economy.
 9. Offences against public health.
 10. Offences affecting property held in common for the use of the public.
 11. Offences against trade and commerce, and the current coin.
 12. Offences against the persons of individuals.
 13. Offences against reputation.
 14. Offences affecting slaves and slave property.
 15. Offences against property other than slaves.
 16. Miscellaneous offences.
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TITLE II.

OF PUNISHMENTS IN GENERAL.

ARTICLE 60. The punishments incurred for offences under this Code are:

1. Death.
2. Imprisonment in the Penitentiary for life or for a period of time.
3. Imprisonment in the County jail.
4. Forfeiture of civil or political rights, or suspension from such rights for a limited time.
5. Pecuniary fines.

ART. 61. When an offence of which a person is convicted, is in its nature continuous, there shall also be judgment for its suppression.

ART. 62. In case of the execution of a convict under sentence of death, or where he is imprisoned for life, there shall be no forfeiture of any kind to the State, nor shall any cost of prosecution be collected from his estate.

ART. 63. When a convict is imprisoned in the Penitentiary, his property shall be controlled and managed in the manner directed by law, but there shall in no case, whether of felony or misdemeanor, be a forfeiture of property of any kind to the State.

ART. 64. When the penalty affixed to the commission of any offence is deprivation of political rights, such rights are intended to include the right of holding office, of serving on juries and of suffrage, and it is discretionary with the jury whenever such punishment is annexed to an offence, to deprive the defendant of one or both of these rights, or to suspend the exercise of one or both for a limited time. *amended* *W. 156*

ART. 65. Whenever a minimum or maximum punishment is fixed by law, and by reason of any aggravation of the offence, or the existence of any circumstance on account of which, the law directs that the punishment be doubled, this shall be construed to mean, that the jury shall not inflict less than double the smallest punishment incurred by the law, nor more than double the greatest punishment so incurred.

ART. 66. If fine and imprisonment are the punishments to be incurred for any offence, and it is provided that the punishment be doubled in any particular case, then the jury are to assess not less than double the smallest, and not more than double the largest fine, prescribed by law, and not more than double the longest period of imprisonment, nor less than double the shortest period of imprisonment so prescribed.

ART. 67. When an offence is punishable by either fine or imprisonment, and as an alternative it is declared that the punishment shall be doubled in any particular case, the jury are to assess not less than double the amount of the smallest fine, nor more than double the amount of the largest fine, or as an alternative, they shall assess not less than double the shortest period of imprisonment, nor more than double the longest period. This rule applies where there may be more than two kinds of punishment prescribed as alternatives.

ART. 68. Where it is directed by law that in any particular case the punishment shall be increased one half, it is to be construed to mean that the jury may, beside the punishment ordinarily prescribed by law, assess such additional punishment as shall not be less than one half the penalty in ordinary cases, and all the rules before prescribed with respect to offences which by law incur alternative punishments, are applicable to cases where the penalty is to be so increased.

ART. 69. When it is provided that the punishment in any given case, on account of mitigating circumstances, shall be diminished one half, the jury shall assess only one half of the penalty fixed by law for the offence under ordinary circumstances, and so with regard to any other proportion in which the penalty is directed to be diminished.

ART. 70. In the diminution of punishments, the same rule as to two or more penalties, or as to alternative penalties, shall apply which are prescribed with regard to the increase of punishment.

amended
III. 107. **ART. 71.** The foregoing rules, as to increase or diminution of punishments, have no application to cases where the highest penalty may be death, nor to any case where the penalty is total deprivation of civil or political rights.

ART. 72. The punishment of death is inflicted by hanging, as prescribed in the Code of Criminal Procedure.

ART. 73. Whenever the penalty, prescribed for an offence, is imprisonment for a term of years in the Penitentiary, imprisonment to hard labor is intended.

ART. 74. In cases where the penalty affixed is imprisonment in the Penitentiary for life, the jury may in their discretion direct that the confinement be solitary, or that the whole or any portion of it be to labor.

ART. 75. Whenever an offence is committed by an officer and the same appears to the jury to be a willful violation of duty, they shall so find, and such officer shall be removed from office.

ART. 76. Whenever by the provisions of this Code the

penalty for an offence is confinement in the Penitentiary, or fine as an alternative, it shall be in the discretion of the jury to substitute imprisonment in the County jail instead of the Penitentiary.

ART. 77. Where it appears by the proof on the trial of a cause that the offender was at the time of the commission of the offence, not over the age of seventeen years, he shall be sent to the House of Correction, in all cases where a person over that age would be liable to imprisonment in the Penitentiary for the same offence.

ART. 78. The Terms of confinement in the House of Correction, shall be the same as the terms of confinement of persons over the age of seventeen years in the Penitentiary in like cases.

ART. 79. When it may appear to the jury that the time fixed by law for such confinement is not sufficiently long to effect a reformation of the offender, they may in their discretion extend the time, but shall not, under the provisions of this Article, so extend it as that the offender, when discharged, will be more than twenty-one years of age; and nothing in this Article shall be so construed, as to prevent the confinement of a person in the House of Correction, for such length of time as will make his confinement therein reach beyond the period when he is twenty-one years of age, in cases where the longest term fixed by law will, if adopted by the jury, go beyond that period.

TITLE III.

OF THE PENITENTIARY.

CHAPTER I.

ITS ORGANIZATION.

ARTICLE 80. The Penitentiary of the State as established, located, and organized, under the provisions of an Act of the Legislature of March 13, 1848, with such modifications as are herein set forth, is the place of confinement and punishment for all offenders over the age defined in Article 77, who by sentence of a competent Court are directed to be confined in the Penitentiary.

ART. 81. The Directors of the Penitentiary shall report to the Governor biennially on the first day of November, the condition of the buildings belonging to the Penitentiary, and shall make such suggestions as they deem advisable relative to any improvements or changes in the plan of the establishment, by means of which it may be better adapted to carry out the objects for which it is designed in accordance with the provisions of this Title.

CHAPTER II.

OFFICERS OF THE PENITENTIARY.

ARTICLE 82. The following officers of the Penitentiary shall be appointed by the Governor, by and with the advice and consent of the Senate, to-wit: A Superintendent, three Directors, and a Financial Agent.

ART. 83. The officers named in the preceding Article shall continue in office for a term of four years, unless removed; but the Governor, when the Legislature is not in session, shall exercise the power of appointing and removing as in other like cases.

ART. 84. The Directors, by the vote of a majority, shall appoint a Chaplain, Physician and such number of Overseers and Guards as may be requisite; and they may, when deemed necessary, appoint an Underkeeper.

ART. 85. Nurses may be employed by the Directors, at the suggestion of the Physician of the Penitentiary when required in cases of sickness.

ART. 86. The Chaplain, Physician, Underkeeper, (if any,) Overseers and Guards shall be subject to removal at any time by the Directors.

ART. 87. The officers of the Penitentiary shall be paid as follows:

To the Superintendent an annual salary of fifteen hundred dollars;

To the Financial Agent an annual salary of fifteen hundred dollars;

To the Directors, each an annual salary of two hundred and fifty dollars;

To the Chaplain an annual salary of two hundred and fifty dollars;

To the attending Physician an annual salary of five hundred dollars;

To the Underkeeper, if any, and to each Overseer, Guard or Nurse, such compensation as may be agreed upon by contract with the Directors.

ART. 88. The salaries of the Superintendent, Directors, Financial Agent, Physician and Chaplain shall be paid quarterly out of the Treasury of the State, on the warrant of the Comptroller.

ART. 89. The account of the Superintendent shall be certified to by the Directors. The accounts of the Directors, Financial Agent, Chaplain and Physician, shall be certified to by the Superintendent.

CHAPTER III.

OF CONVEYING PRISONERS TO THE PENITENTIARY.

ARTICLE 90. Immediately after final sentence shall have been pronounced, the convict shall be conveyed to the Penitentiary by the Sheriff of the county where the conviction took place, at the expense of the State, provided that when there are more convicts than one to be transported at the same term of the Court, they shall all be conveyed at one time.

ART. 91. The Sheriff shall employ a sufficient guard under the direction of the District Judge, whose certificate shall be sufficient evidence for the allowance of the account of the Sheriff, and the same shall be paid by the Financial Agent, out of the appropriation for the Penitentiary.

ART. 92. The compensation allowed by law for conveying prisoners to the Penitentiary, shall be paid out of the appropriation for the Penitentiary, upon the certificate of the Superintendent.

ART. 93. The Clerk of the Court in which any conviction has been had, shall furnish the Sheriff with a certified copy of the judgment of conviction, and also a certificate showing the name, age and previous occupation, if known, of the convict. The Sheriff shall deliver this certificate to the Superintendent, who shall receipt for the person of the convict; such receipt shall be returned to the Clerk of the proper Court and be by him filed. The certified transcript above provided for, is in addition to that contemplated by the provisions of Article 706, of the Code of Criminal Procedure.

CHAPTER IV.

OF THE DUTIES OF THE DIRECTORS.

ARTICLE 94. The Directors of the Penitentiary shall make such rules and by-laws as may be necessary for the government thereof, and for the punishment and control of refractory persons confined therein, and submit the same to the Governor for his approval.

ART. 95. They shall cause the rules and by-laws so established, to be printed and put in some conspicuous place in the prison, and furnish each convict who can read with a copy.

ART. 96. They shall appoint all officers and employees of the Penitentiary not otherwise provided for.

ART. 97. They shall at all times have access to the Penitentiary, and shall visit the same at least twice in each month, to inquire into the manner in which the convicts are treated.

ART. 98. The Directors have power, and it is their duty, to examine into any improper conduct alleged against the Superintendent, Financial Agent, or any other officer or employee of the Penitentiary.

ART. 99. They shall report to the Governor any improper conduct on the part of the Superintendent or Financial Agent, and may at discretion remove any officer or employee who has been appointed by them.

ART. 100. The Directors may call before them, and administer oaths to any person, for the purpose of aiding them in the investigation of any subject within the range of their duties, and they may take other necessary steps to ascertain the truth, with respect to any matter of which they have a right to inquire.

ART. 101. A distinction shall be made in the treatment of convicts, so as to extend to such as are orderly, industrious, and obedient, comforts and privileges according to their merit ; and they may establish a system of rewards and punishments not inconsistent with the provisions of this Title.

ART. 102. The Directors shall report to the Governor biennially, on or before the first Monday in November, or oftener if required by him, a comprehensive view of the government, discipline, condition and transactions of the Penitentiary for the preceding two years, or since the time of their last report, and transmit the same, together with the report of the Financial Agent, Superintendent and Physician, which report shall be laid before the Legislature.

ART. 103. Whenever the term "Directors" is used, it means the three Directors or any two of them.

CHAPTER V.

OF THE DUTIES OF THE SUPERINTENDENT AND UNDERKEEPER.

§ I.

Of the Superintendent.

ARTICLE 104. The Superintendent is to exercise general control over the buildings, grounds, material for labor, erection and completion of the Penitentiary, and of all property of right appurtenant to the Penitentiary.

ART. 105. He is to have general supervision of the conduct and management of convicts, and control over the Underkeeper, if any, Overseers, Guards, and other subordinate employees connected with the Penitentiary.

ART. 106. It is his duty to see that all officers under his supervision perform their duties, and he shall report any failure on their part, in this respect, to the Directors.

ART. 107. He shall visit daily the cells of the prisoners and the places where they are engaged in labor; shall see that they are properly treated; shall give attention to all complaints made by a convict against the Underkeeper, or any Overseer or other subordinate employee. He shall enter into

friendly conversation with the convicts, and seek, by the use of kindness, to produce reformation.

ART. 108. As the executive officer of the Penitentiary, he shall have all powers necessary to a discharge of his duties, subject only to the instructions of the board of Directors as provided by law; and he shall be responsible for the manner in which the discipline of the Penitentiary is enforced.

ART. 109. He shall keep a book in which shall be registered opposite to the name of each convict, all such incidents of importance as may occur respecting the demeanor of any prisoner. He shall also make notes of such occurrences in the course of the discharge of his duties as may seem important.

ART. 110. The Superintendent shall reside in the building erected in the plan of the Penitentiary, and known as the Superintendent's house, and shall not absent himself from the Penitentiary enclosure unless by permission of the Directors or upon business important to the interest of the State, and connected with the duties of his office.

ART. 111. During the absence or inability of the Financial Agent to act, he shall discharge the duties of that officer.

ART. 112. The Superintendent shall not be present when the convicts in the Penitentiary are visited by the Directors, or either of them, unless at their request.

ART. 113. The Under Officers and Guards of the Penitentiary, who are to be appointed by the Directors, shall be first nominated for such appointment by the Superintendent. He may nominate several persons for the same appointment, from whom the Directors may select; but in case the Directors do not approve of nominations made by the Superintendent, they may appoint independently of such nominations.

ART. 114. All the officers and employees of the Penitentiary appointed by the Directors, except the Chaplain and Physician, shall be subject to the orders of the Superintendent, and in case of violation of duty on the part of any of them, the Superintendent shall report such misconduct to the Directors.

ART. 115. He shall make a written report to the Directors biennially; on or before the first day of November, unless oftener required, upon subjects connected with the duties of his office, and under his management, which shall contain an estimate of the material (if any) for the erection and completion of Penitentiary buildings, and for the purpose of carrying on the business in the various departments of the Penitentiary, with the amount that may be required (if any) for the purchase of the same, and for the pay of the officers and employees of the Penitentiary, transportation of convicts, rations, clothing and medicines, and advancements to discharge convicts, for which an appropriation would be required out of the State Treasury.

ART. 116. He shall also in his report, distinctly set forth, the number of convicts who have been committed since his last report, giving the name, age, sex and place of nativity of each, their habits, education, marital relations, the term of imprisonment, the offences for which they are confined, from what county sent, the number of deaths, escapes, pardons, or discharges by expiration of sentence, with the number then in confinement, the various occupations in which they are employed, and the number employed in each.

ART. 117. In case of escapes, the Superintendent is authorized to offer a reward, not exceeding one hundred dollars, for the apprehension and return of a convict, which shall be paid to the person entitled thereto on the certificate of the Superintendent.

§ II.

Of the Underkeeper.

ARTICLE 118. The Underkeeper of the Penitentiary shall assist the Superintendent in the discharge of his duties, and shall be subject to his directions, and in case of any ill-treatment on the part of the Superintendent, may complain to the Directors.

ART. 119. He shall reside within the walls of the Penitentiary, or at some point immediately adjacent, and shall not

on any occasion absent himself from the duties of his office, except by permission of the Superintendent.

ART. 120. He shall visit daily the cells of the convicts ; shall see that they are provided for according to the requirements of this Title and of the rules and by-laws prescribed by the Directors, and during the hours of labor shall occupy his time in personal supervision of the various occupations of the convicts.

ART. 121. He shall give attention to all complaints made by a prisoner of ill-treatment on the part of an Overseer, Guard, or other subordinate employee of the Penitentiary, and report the same to the Superintendent.

ART. 122. He shall superintend in person the Overseers and Guard of the Penitentiary, and the labor of the convicts ; shall see that all employees under him perform their duties, and that convicts are kept industriously employed. The Underkeeper shall not be present when the cells of convicts are visited by the Superintendent or Directors, nor when they visit a convict to inquire into the manner in which he is treated.

CHAPTER VI.

OF THE DUTIES OF THE FINANCIAL AGENT.

ARTICLE 123. He shall be the purchasing, selling and disbursing agent of the Penitentiary. And before entering on the discharge of his duties, shall give bond in the sum of twenty thousand dollars, for the faithful performance of his trust, with two or more good and sufficient securities, to be approved by the Board of Directors, which shall be recorded in the Directors book of minutes, and transmitted by them to the State Department for safe keeping, and shall, when not otherwise provided by law, pay all accounts for services rendered and purchases made on the presentation of proper vouchers ; he shall also pay all drafts drawn on him by the Superintendent in favor of a Sheriff, for the transportation of prisoners.

ART. 124. He shall, from time to time, receive all monies appropriated for the purpose of the Penitentiary, or cotton and woolen factories. And on his requisition, approved by the Directors, the Comptroller of public accounts is authorized and required to draw his warrant on the State Treasury for the same : Provided he shall not receive at any one time, more than one-half of the annual amount so appropriated.

ART. 125. He shall, under the advice of the Directors, purchase all such materials as may be necessary for building or manufacturing purposes, subsistence, clothing and medicines for the convicts. He shall also keep an account of each article sold, with the price for which the same was sold. Also an account specifying the amount of monies received by him, and on what account ; together with his disbursements. All of which shall be by him entered in well bound books, subject to the inspection of the Superintendent and Directors, or either of them.

ART. 126. He shall, every twelve months, furnish the Directors with a written statement of his receipts and disbursements, together with an account of sales.

ART. 127. He shall annually furnish the Directors with an abstract statement of his general transactions for the preceding year. And biennially, on or before the first day of November, he shall furnish the Directors with an abstract of his receipts and disbursements, sales and purchases, for the preceding two years, who shall carefully examine and compare the same with his vouchers and original entries ; and if found correct, shall transmit the same, certified under their hands, to the Governor of the State.

ART. 128. Suits for the recovery of monies due on account of sales, or otherwise, shall be in the name of the Financial Agent, for the use of the Texas State Penitentiary.

ART. 129. During the absence of the Superintendent or his inability to act, the Financial Agent shall discharge the duties of Superintendent.

ART. 211. The convicts in the Penitentiary shall have no communication with those in the House of Correction, except when one of the former is made an instructor of one of the latter, and then only in the presence of some officer of the Penitentiary.

ART. 212. Any ill treatment by a subordinate officer or guard towards a convict shall be punished by the Directors by deducting from the pay of such officer, or, in cases where it is proper, by prosecution before a Magistrate, or by dismissal from office.

ART. 213. All complaints made by a convict shall be promptly investigated by the Superintendent or Directors, and the proper remedy applied.

TITLE V.

OF

PRINCIPALS, ACCOMPLICES AND ACCESSARIES.

CHAPTER I.

PRINCIPALS.

ARTICLE 214. All persons are principals who are guilty of acting together in the commission of an offence.

ART. 215. When an offence is actually committed by one or more persons, but others are present, and knowing the unlawful intent, aid by acts, or encourage by words or gestures, those actually engaged in the commission of the unlawful act ;

or who not being actually present, keep watch so as to prevent the interruption of those engaged in committing the offence, such persons so aiding, encouraging, or keeping watch, are principal offenders, and may be prosecuted and convicted as such.

ART. 216. All persons who shall engage in procuring aid, arms or means of any kind, to assist in the commission of an offence while others are executing the unlawful act, and all persons who endeavor, at the time of the commission of the offence, to secure the safety or concealment of the offenders, are principals, and may be convicted and punished as such.

ART. 217. If any one, by employing a child or other person, who cannot be punished, to commit an offence, or by any means, such as laying poison where it may be taken, and with intent that it shall be taken, or by preparing any other means by which a person may injure himself, and with intent that such person shall thereby be injured, or by any other indirect means, cause another to receive an injury to his person or property, the offender, by the use of such indirect means, becomes a principal.

ART. 218. Any person who advises or agrees to the commission of an offence, and who is present when the same is committed, is a principal thereto, whether he aids or not in the illegal act.

amend
VII. 157.

CHAPTER II.

ACCOMPlices.

ARTICLE 219. An accomplice is one who is not present at the commission of an offence, but who, before the act is done, advises, commands or encourages another to commit the offence;

Or, who agrees with the principal offender to aid him in

committing the offence, though he may not have given such aid ; or,

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

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

ART. 220. To render a person guilty as an accomplice, it is not necessary that the precise offence which he may have advised, or to the execution of which he may have given encouragement or promised assistance, should be committed ; it is sufficient that the offence be of the same nature, though different in degree, as that which he so advised or encouraged.

ART. 220a* Accomplices shall, in all cases not otherwise expressly provided for, be punished in the same manner as the principal offender.

ART. 221. If, in the attempt to commit one offence, the principal shall by mistake or accident commit some other under the circumstances set forth in Articles 49, 50 and 51, the accomplice to the offence originally intended, shall, if both offences are felonies by law, receive the punishment affixed to the lower of the two offences ; but, if the offence designed be a misdemeanor, he shall receive the highest punishment affixed by law to the commission of such misdemeanor, whether the offence actually committed be a misdemeanor or a felony.

ART. 222. If the principal in an offence less than capital be under the age of seventeen years, the punishment of an accomplice shall be increased, so as not to exceed, however, double the penalty affixed to the offence in ordinary cases.

ART. 223. If the accomplice stands in the relationship of parent, master, guardian, or husband, to the principal offender, he shall, in all such cases, receive the highest punishment annexed to the offence, and the same may in felonies less than capital be increased by the jury to double the highest penalty which would be suffered in ordinary cases.

ART. 224. There may be accomplices to all offences, except manslaughter and negligent homicide.

* See note at the end of the Code.

CHAPTER III.

ACCESSARIES.

ARTICLE 225. An accessory is one who, knowing that an offence has been committed, conceals the offender, or gives him any other aid in order that he may evade an arrest or trial or the execution of his sentence. But no person, who aids an offender in making or preparing his defence at law, or procures him to be bailed, though he afterwards escape, shall be considered an accessory.

ART. 226. The following persons cannot be accessaries :

1. The husband or wife of an offender.
2. His relations in the ascending or descending line, by consanguinity or affinity.
3. His brothers and sisters.
4. His slaves.

ART. 227. Accessaries to offences shall be punished by the infliction of the lowest penalty to which the principal in the offence would be liable.

CHAPTER IV.

TRIAL OF ACCOMPLICES AND ACCESSARIES.

ARTICLE 228. An accomplice may be arrested, tried, and punished, before the conviction of the principal offender, and the acquittal of the principal shall not bar a prosecution against the accomplice, but on the trial of an accomplice the evidence must be such as would also have convicted the principal.

ART. 229. An accessory may, in like manner, be tried and punished before the principal, when the latter has escaped,

but if the principal is arrested, he shall be first tried, and, if acquitted, the accessory shall be discharged.

ART. 230. Persons charged as principals, accomplices, or accessaries, whether in the same indictment or by different indictments, cannot be introduced as witnesses for one another, but they may claim a severance; and if any one or more be acquitted, they may testify in behalf of the others.

TITLE VI.

OF OFFENCES AGAINST THE STATE, ITS TERRITORY, PROPERTY AND REVENUE.

CHAPTER I.

TREASON.

ARTICLE 231. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. [Cons. Art. 7, Sec. 2.]

ART. 232. If any citizen of this State be guilty of treason, he shall suffer death, or imprisonment in the Penitentiary for life, at the discretion of the jury.

CHAPTER II.

MISPRISION OF TREASON.

ARTICLE 233. Whoever shall know that another person has committed treason, or is intending so to do, and shall not, within five days from the time of his having come to such knowledge, give information of the same to the Governor, or to some Magistrate or peace officer of the State, shall be deemed guilty of misprision of treason.

amended **ART. 234.** The punishment for misprision of treason is confinement in the Penitentiary a time not exceeding seven years, or fine not exceeding two thousand dollars.

CHAPTER III.

EMBEZZLEMENT OR MISAPPLICATION OF PUBLIC MONEY.

amended **ARTICLE 235.** If any officer of the Government who is by law a receiver or depository of public money, or any Clerk or other person employed about the office of such officer, shall fraudulently take or misapply or convert to his own use, any part of such public money, or secrete the same with intent to take, misapply or convert it to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be punished by confinement in the Penitentiary for a term not exceeding ten years.

amended **ART. 236.** If any person shall knowingly and with fraudulent intention receive or conceal any public money which has been taken or converted to his own use by an officer or employee as set forth in the preceding Article, he shall be punished by confinement in the Penitentiary for a term not exceeding five years.

ART. 237. Under the term "officer of the Government," as used in Article 235, are included the State Treasurer and all other heads of Departments who, by law, may receive or keep in their care public money of the State, Assessors and Collectors and all other officers, who by law are authorized to collect, receive or keep money due to the government.

CHAPTER IV.

COLLECTION OF TAXES AND OTHER PUBLIC MONEY.

ARTICLE 238. If any person authorized to collect or receive taxes or other money due the State, shall extort or attempt to extort from any one a larger sum than is due, or shall receive any sum of money or other reward as a consideration for granting any delay in the collection of such dues, or for doing any illegal act, or omitting to do any legal act in relation to the collection of such money, he shall be punished by fine, not exceeding five hundred dollars, and shall be dismissed from office, and rendered incapable forever of holding the same office.

ART. 239. If any Assessor and Collector of taxes shall advance for a person owing taxes to the government the amount of money so due, and shall charge therefor a rate of interest greater than twelve per centum per annum, he shall be punished in the manner provided in the preceding Article.

ART. 240. Within the meaning of Article 239 is included the case of an Assessor and Collector who fails to collect taxes due, and assumes to be responsible to the government therefor, and receives for such act any compensation or reward.

ART. 241. If any person shall by force, or threats of force, prevent, or attempt to prevent, the collection of taxes or other money due the State by an officer authorized to enforce such collection, he shall be punished by fine, not less than one hun-

dred, nor more than five hundred dollars, and by imprisonment in the County Jail not less than three months nor more than one year.

When the means used to prevent the collection are such as to amount to a riot, or unlawful assembly, the punishment shall be that which is prescribed in Title XI., Article 367.

CHAPTER V.

DEALING IN FRAUDULENT LAND CERTIFICATES.

annexed **ARTICLE 242.** If any person shall make or issue any fraudulent or forged certificate for land, or shall knowingly purchase or sell any such certificate, or locate any such certificate, or be in any manner directly or indirectly concerned in the making or issuing, purchasing, selling, or locating any such certificate for land, knowing the same to be fraudulent, he shall be punished by confinement in the Penitentiary for a time not more than two years.

VII. 158 **ART. 243.** It shall not be lawful for any District or Deputy Surveyor to locate any certificate for land, or to survey any land for any person holding a head-right certificate of the first or second class, unless it be certified under the hand and seal of the Clerk of the County Court of the county where the certificate was issued, or the county where it is proposed to be located, or under the hand and seal of the Commissioner of the General Land Office, that the same has been reported by the Commissioners appointed under an Act of Congress to detect fraudulent land certificates, &c., passed January, 1840, as a genuine and legal claim against the Government of Texas; and any Surveyor offending against the true intent and meaning of this Article, shall be deemed guilty of a high misdemeanor, and on conviction shall be fined in any sum not more than five thousand dollars.

CHAPTER VI.

DEALING IN PUBLIC LANDS BY OFFICERS.

ARTICLE 244. If any person who is an officer or clerk in the General Land Office, or a District Surveyor or Deputy District Surveyor, shall directly or indirectly be concerned in the purchase of any right, title or interest in any public land, in his own name, or in the name of any other person ; or shall take or receive any fee or emolument for negotiating or transacting any business connected with the duties of his office, other than the fees allowed by law, he shall be removed from office and fined in any sum not exceeding five hundred dollars, and be excluded from holding any other office under the State.

CHAPTER VII.

FORGERY OF PATENTS, LAND CERTIFICATES, &c., &c.

ARTICLE 245. If any person shall forge any concession, patent, or certificate, bounty warrant, donation, or land scrip for land within this State, he shall be punished by confinement in the Penitentiary not less than five, nor more than twenty years.

ART. 246. The preceding Article is intended to include any and all instruments of writing, or documents of whatever name or description, which purport to grant, concede, give, or convey any right or interest in any land, emanating from any former Government of Texas, or from the State, whether such claim or title for land be perfect or imperfect.

ART. 247. If any person shall forge an instrument of writing of any description whatever, with intent that the

same may be used for the purpose of obtaining from any of the public departments or offices of the State at the Seat of Government, any bounty or donation warrant, or land scrip, or patent for any public land of this State ; or that the same may be used to obtain any money or property of the State, he shall be punished by confinement in the Penitentiary not less than five, nor more than twenty years.

amended
77.158 ART. 248. If any person shall wilfully and knowingly pass or use, or attempt to pass or use, any such false document or instrument as is mentioned in the three preceding Articles, he shall be punished by confinement in the Penitentiary not less than one, nor more than five years.

ART. 249. The Rules prescribed in Title XVI., Chapter I, of this Code, defining the offence of forgery, apply to the offences enumerated in the four preceding Articles.

TITLE VII.

OF OFFENCES AFFECTING THE EXECUTIVE, LEGISLATIVE AND JUDICIARY DEPARTMENTS OF THE GOVERNMENT.

CHAPTER I.

BRIBERY.

amended
77.159 ARTICLE 250. If any person shall bribe or offer to bribe any Executive, Legislative or Judicial officer, after his election or appointment, and either before or after he shall have been qualified or entered upon the duties of his office, with intent

to influence his act, vote, opinion, decision or judgment, on any matter, question, cause or proceeding which may be then pending, or may thereafter, by law, be brought before such officer in his official capacity, he shall be punished by confinement in the Penitentiary for a term not exceeding five years, or by fine not exceeding three thousand dollars.

ART. 251. Any Legislative, Executive or Judicial officer, who shall accept a bribe under an agreement or with an understanding that his act, vote, opinion or judgment shall be done or given in any particular manner, or upon a particular side of any question, cause or proceeding, which is, or may thereafter by law be brought before him, or that he shall make any particular nomination or appointment, shall be punished by confinement in the Penitentiary not exceeding ten years, or by fine not exceeding five thousand dollars.

ART. 252. Under the name of Executive, Legislative and Judicial officers, are included the Governor, Lieutenant Governor, Comptroller, Auditor, State Treasurer, Commissioner of the General Land Office, Members of the Legislature, Judges of the Supreme and District Courts, Attorney General, District Attorneys, Chief Justices of the County Courts, Justices of the Peace, Mayors and Judges of such City Courts as may be organized by law.

ART. 253. If any person shall bribe, or offer to bribe, any Clerk or other officer of either branch of the Legislature, or any Clerk or Secretary in any department of the State Government, with the intent to influence such officer to make any false entry in any book or record pertaining to his office, or to mutilate or destroy any part of such book or record, or to violate any other duty imposed upon him as an officer, he shall be punished by confinement in the Penitentiary a term not exceeding two years, or by fine not exceeding two thousand dollars.

ART. 254. If any officer named in the preceding Article shall accept a bribe so offered, he shall be punished by confinement in the Penitentiary not exceeding two years, or by fine not exceeding two thousand dollars.

ART. 255. By a "bribe," as used in this Title, and throughout this code, is meant any gift, advantage or emolument,

bestowed for the purpose of inducing an officer or other person to do a particular act in violation of his duty, or as an inducement to favor, or in some manner aid the person offering the same, or some other person in a manner forbidden by law.

ART. 256. The gift, advantage or emolument need not be direct; it may be hidden under the semblance of a sale, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. The offer or gift of the bribe must precede the act which it is intended to induce the person bribed to perform.

TITLE VIII.

OF OFFENCES AFFECTING THE RIGHT OF SUFFRAGE.

CHAPTER I.

BRIBERY AND UNDUE INFLUENCE.

ARTICLE 257. If any person shall bribe, or offer to bribe, any elector, for the purpose of influencing his vote at any public election, he shall be punished by fine, not exceeding five hundred dollars.

ART. 258. If any elector shall accept a bribe offered as set forth in the preceding Article, he shall be punished in like manner, as is provided with respect to the person offering the bribe.

ART. 259. If any person shall bribe, or offer to bribe, any

Manager, Judge, or Clerk of a public election, or any officer attending the same, as a consideration for some act done or omitted to be done, or to be done or omitted, contrary to his official duty in relation to such election, he shall be punished by fine, not exceeding five hundred dollars.

ART. 260. If any Manager, Judge or Clerk of an election, or officer attending thereon, shall accept a bribe offered as set forth in the preceding Article, he shall be punished in the same manner as is provided in reference to the person offering the bribe.

ART. 261. If any one shall offer or give a bribe to any person whatever, for the purpose of inducing him to persuade, or by means not amounting to bribery, to procure persons to vote at any public election, for or against any particular candidate, the person so giving or offering, and the person so accepting, shall be punished by fine, not exceeding two hundred dollars.

ART. 262. If any person shall furnish money to another, to be used for the purpose of promoting the success or defeat of any particular candidate, or of any particular question submitted to a vote of the people, he shall be punished by fine, not exceeding two hundred dollars.

ART. 263. If any person shall procure, or endeavor to procure, the vote of any elector, or the influence of any person over other electors, by means of violence, or by threats of violence, or of any injury to the person or property of such elector or person threatened, he shall be punished by fine, not exceeding five hundred dollars.

CHAPTER II.

OFFENCES BY JUDGES AND OTHER OFFICERS OF ELECTIONS.

ARTICLE 264. If any Manager, Judge or Clerk of an election, shall knowingly make or consent to any false entry on

the list of voters, or put into the ballot box, or permit to be put in, any ballot not given by a voter, or take out of such box, or permit to be taken out, any ballot deposited therein, except in the manner prescribed by law, or change any ballot given by an elector, or make any false return as to the number of votes given for or against any particular candidate, the person so offending shall be punished by fine, not less than one hundred dollars nor more than one thousand dollars.

ART. 265. Any Judge, Clerk or Manager of an election, who, without the consent of an elector, shall open and read, or permit to be opened and read, any ballot offered by such elector, except in counting the votes given, as provided by law, shall be punished by fine, not exceeding one hundred dollars.

ART. 266. If any Manager or Judge of an election, shall corruptly refuse to receive the vote of any qualified elector, who shows by his own oath, that he is entitled to vote, when his vote is objected to, such Manager or Judge shall be punished by fine, not exceeding two hundred dollars.

ART. 267. Any Manager, Judge or Clerk of an election, who shall, while discharging his duties as such, attempt to influence the vote of an elector for or against any particular candidate, shall be punished by fine, not exceeding two hundred dollars.

ART. 268. Any Manager, Judge or Clerk of an election, who shall, while in discharge of his duties as such, by violence, or threats of violence, attempt to influence the vote of an elector for or against any particular candidate, shall be punished by fine, not exceeding one thousand dollars.

ART. 269. If any officer authorized by law to give a certificate of election, shall, knowingly and corruptly, give any false certificate thereof, he shall be punished by fine, not exceeding three hundred dollars.

*amended
VII. 160*

CHAPTER III.

ILLEGAL ACTS OF MAGISTRATES AND PEACE OFFICERS.

ARTICLE 270. If any Magistrate or peace officer shall, knowingly, cause an elector to be arrested in attending upon, going to, or returning from an election, except in cases of treason, felony, or breach of the peace, he shall be punished by fine, not exceeding three hundred dollars.

CHAPTER IV.

RIOTS AND UNLAWFUL ASSEMBLIES AT ELECTIONS, AND VIOLENCE USED TOWARDS ELECTORS.

ARTICLE 271. If any riot be committed at the place of holding a public election, or within one mile of such place, with a design to disturb or influence such election, every person engaged therein shall be punished by fine not exceeding one thousand dollars.

ART. 272. If any unlawful assembly meet at the place of holding an election, or within a mile thereof, for the purpose of preventing the holding of such election, all persons engaged in such unlawful assembly shall be punished by fine not exceeding five hundred dollars.

ART. 273. If any person, by force, or threats of force, shall prevent, or attempt to prevent, any person from voting at a public election, he shall be punished by fine not exceeding five hundred dollars.

ART. 274. When the means used amount to a riot or unlawful assembly, the persons engaged therein are punishable according to the provisions of Articles 271 and 272.

CHAPTER V.

MISCELLANEOUS OFFENCES AFFECTING THE RIGHT OF SUFFRAGE.

ARTICLE 275. If any person, knowing himself not to be a qualified voter, shall, at any election, vote, or offer to vote, for any officer to be then chosen, he shall be fined in a sum not exceeding one hundred dollars for each offence.

ART. 276. Every person who shall procure aid, assist, counsel, or advise another to give his vote at any election, knowing that the person is not duly qualified to vote, shall be fined in a sum not exceeding two hundred dollars.

ART. 277. If any voter shall knowingly give in more than one ballot at any one time of balloting at any election, or if he shall vote, or offer to vote, more than once at the same election, he shall for every such offence be fined in any sum not exceeding three hundred dollars.

ART. 278. If any person challenged as unqualified, shall be guilty of wilful and corrupt false swearing, in taking any oath prescribed by law, he shall be punished by confinement in the Penitentiary, for not less than one nor more than five years.

ART. 279. Every person who shall wilfully and corruptly procure any person to swear falsely, as spoken of in the preceding Article, shall be punished by confinement in the Penitentiary for any time not exceeding three years, or by fine, not exceeding three thousand dollars.

ART. 280. If any person shall fraudulently alter or obliterate, or wilfully secrete, suppress, or destroy any ballots, election return, or certificate of election, he shall be punished by fine, not exceeding three thousand dollars.

ART. 281. If any person entrusted with the transmission of an election return, shall wilfully do any act that shall defeat the delivery thereof, or shall wilfully neglect to deliver the same, as directed by law, he shall be punished by fine not exceeding one thousand dollars.

ART. 282. If any person shall take away such election re-

turn from any person entrusted therewith, either by force or in any other manner, or shall wilfully do any act that shall defeat the due delivery thereof, as directed by law, he shall be punished by fine not exceeding two thousand dollars.

ART. 283. If any officer on whom a duty is enjoined, in any statute relating to elections, shall be guilty of a wilfull neglect of such duty, or shall act corruptly, or with partiality, in the discharge of such duty, in any matter not provided for in this Title, he shall be fined in a sum not less than one hundred nor more than one thousand dollars.

TITLE IX.

OF OFFENCES WHICH AFFECT THE FREE EXERCISE OF RELIGIOUS OPINION.

ARTICLE 284. If any person shall maliciously disturb any congregation assembled for religious worship, and conducting themselves in a lawful manner, whatever may be the religion professed by such congregation, he may be put under restraint by any peace officer present, during the continuance of such religious worship. And, in addition thereto, he shall, on conviction, be fined a sum not less than five dollars nor more than one hundred dollars.

ART. 285. If complaint be made to any Magistrate, that a person has committed the offence mentioned in the preceding Article, he may be, at the discretion of the Magistrate, bound over to keep the peace, and to refrain from any like disturbance for a term of one year.

ART. 286. Double the fine prescribed in Article 284, shall be imposed for any subsequent offence of the same kind.

TITLE X.

OF OFFENCES AGAINST PUBLIC JUSTICE.

CHAPTER I.

OF PERJURY AND FALSE SWEARING.

ARTICLE 287. Perjury is a false statement, either written or verbal, deliberately and wilfully made, relating to something past or present, under the sanction of an oath, or such affirmation as is by law equivalent to an oath, where such oath or affirmation is legally administered, under circumstances in which an oath or affirmation is required by law, or is necessary for the prosecution or defence of any private right, or for the ends of public justice.

ART. 288. A false statement made through inadvertance or under agitation, or by mistake, is not perjury.

ART. 289. The oath or affirmation must be administered in the manner required by law, and by some person duly authorized to administer the same in the matter or cause in which such oath or affirmation is taken.

ART. 290. The false statement must be of something past or present—oaths of office, or any other promissory oaths, are therefore not included in the definition of perjury, except that part of the official oath prescribed by the Constitution which relates to duelling.

ART. 290a* All oaths or affirmations legally taken in any stage of a judicial proceeding, civil or criminal, in or out of Court, are included in the description of this offence.

ART. 291. The statement of any circumstance wholly immaterial to the matter in respect to which the declaration is made, is not perjury.

* See Note at the end of the Code.

ART. 292. The crime of perjury is punished by imprisonment in the Penitentiary for a term not more than ten years nor less than five years.

ART. 293. When the perjury is committed on a trial of a capital felony, and the person guilty of such perjury has, on the trial of such felony, sworn falsely to a material fact tending to produce conviction, and the person so accused of the capital felony is convicted and suffers the penalty of death, the punishment of the perjury so committed shall be death.

ART. 294. If any person shall deliberately and wilfully, under oath or affirmation legally administered, make a false statement by a voluntary declaration or affidavit, which is not required by law, or made in the course of a judicial proceeding, he is guilty of *false swearing*, and shall be punished by imprisonment in the Penitentiary not less than two nor more than five years.

ART. 295. The false swearing must, as in regard to perjury, be relative to something past or present.

ART. 296. If any person shall designedly induce another to commit perjury or false swearing, he shall be punished as if he had himself committed the crime.

ART. 297. If any person shall, by any means whatever, corruptly attempt to induce another to commit the offence of perjury, he shall be punished by imprisonment in the Penitentiary not less than two nor more than five years.

ART. 298. If any person shall, by any means whatever, corruptly attempt to induce another to commit the offence of false swearing, he shall be punished by imprisonment in the Penitentiary for a term not less than one nor more than five years.

CHAPTER II.

BRIBERY.

~~ARTICLE 299.~~ ARTICLE 299. If any person shall bribe, or offer to bribe, any Auditor, Juror, Arbitrator, Umpire or Referee, with intent to influence his decision or bias his opinion in relation to any cause or matter which may be pending before, or may thereafter, by law, be submitted to such Auditor, Juror, Arbitrator, Umpire or Referee, he shall be punished by imprisonment in the Penitentiary not more than five years, or by fine not exceeding two thousand dollars.

~~ARTICLE 300.~~ ART. 300. If any Juror, Auditor, Arbitrator, Umpire or Referee, shall accept a bribe offered for the purpose of biasing or influencing his opinion or judgment as set forth in the preceding Article, he shall be punished by confinement in the Penitentiary not more than five years, or by fine not exceeding two thousand dollars.

ART. 301. To complete the offences mentioned in Articles 299 and 300, it is not necessary that the Auditor, Umpire, Arbitrator or Referee, shall have been actually selected or appointed, it is sufficient if the bribe be offered or accepted with a view to the probable appointment or selection of the person to whom the bribe is offered, or by whom it is accepted. Nor is it necessary that the Juror shall have been actually summoned ; it is sufficient if the bribe be given or accepted in view of his being summoned as a Juror or selected as such, to sit in any particular case, civil or criminal.

~~ARTICLE 302.~~ ART. 302. If any person shall bribe, or offer to bribe, any attorney at law, or attorney in fact, charged with the prosecution or defence of a suit, with intent to induce him to divulge any secret of his client, or any circumstance which came to his knowledge as counsel, to the injury of his client, or with intent to induce him to give counsel, or in any way advise or assist the opposite party to the injury of his client, in any cause, civil or criminal, or to neglect the interest of his client, he shall be punished by imprisonment in the Penitentiary not more than five years, or by fine not exceeding two thousand dollars.

ART. 303. If any attorney, at law or in fact, charged as

above stated with the management of any cause, civil or criminal, shall accept a bribe offered to induce him to divulge any secret of his client, or any circumstance which came to his knowledge as counsel, to the injury of his client, or to give counsel, or in any way advise or assist the opposite party to the injury of his client, or to neglect the interest of his client, he shall be punished in the manner provided in the preceding Article.

ART. 304. If any person shall bribe, or offer to bribe, any clerk or deputy clerk of any Court of Record, to induce such officer to alter, destroy or mutilate any book, Record or paper pertaining to his office, or to surrender to the person offending, such book, record or paper for any unlawful purpose, he shall be punished by imprisonment in the Penitentiary for a term not exceeding five years, or by fine not exceeding two thousand dollars.

ART. 305. If any clerk, or deputy clerk, of any Court of Record in this State, shall accept a bribe offered for the purposes enumerated in the preceding Article, he shall be punished by imprisonment in the Penitentiary for a term not exceeding five years, or by fine not exceeding two thousand dollars.

ART. 306. If any person shall bribe, or offer to bribe, any officer named in Article 304, to do any other act not enumerated in said Article, in violation of the duties of his office, or to omit to do any other act incumbent on him as an officer, he shall be punished by imprisonment in the Penitentiary not exceeding three years, or by fine not exceeding one thousand dollars, and the officer accepting such bribe shall be punished in the same manner.

ART. 307. If any person shall bribe, or offer to bribe, any Sheriff, or other peace officer, to permit any prisoner in his custody to escape, he shall be punished by imprisonment in the Penitentiary for a term not exceeding five years, or by fine not exceeding two thousand dollars.

ART. 308. If any person shall bribe, or offer to bribe, any Sheriff, or other peace officer, in any case, civil or criminal, to make a false return upon any process directed to him, or to fail to return any such process, or to summon, or fail to sum-

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mon, any one to serve on a Jury, with a view to produce a result favorable to a particular side in any cause, civil or criminal, he shall be punished by confinement in the Penitentiary not exceeding five years, or by fine not exceeding two thousand dollars.

ART. 309. If any person shall bribe, or offer to bribe, a Sheriff, or any other peace officer, to do any other act not heretofore enumerated, contrary to his duty as an officer, or to omit to do any duty incumbent upon him as an officer, he shall be punished by confinement in the Penitentiary not exceeding three years, or by fine not exceeding one thousand dollars.

ART. 310. If any Sheriff, or other executive officer, shall accept a bribe offered, as mentioned in Articles 308 and 309, he shall receive the same punishment as is affixed to the offence of giving or offering a bribe in the particular case specified.

ART. 311. A person convicted of any one of the offences enumerated in the preceding Articles of this Title, shall, in addition to the punishments prescribed in respect to such offence, be also deprived of his political rights.

CHAPTER III.

OFFENCES RELATING TO THE ARREST AND CUSTODY OF PRISONERS.

ARTICLE 312. Any Sheriff, or other officer, having the legal custody of any person accused or convicted of a capital offence, who wilfully permits such person to escape, or to be rescued, shall be punished by confinement in the Penitentiary not less than two nor more than ten years.

ART. 313. Any Sheriff, or other officer, who has the legal custody of any person accused or convicted of a felony less

than capital, who wilfully permits such person to escape, or to be rescued, shall be punished by imprisonment in the Penitentiary for a term not less than two and not exceeding five years.

ART. 314. Any Sheriff, or other officer, having the legal custody of a person accused or convicted of a misdemeanor, who wilfully permits such person to escape, or to be rescued, shall be fined not exceeding one thousand dollars.

ART. 315. Any Sheriff, or other officer, who has the legal custody of a person accused or convicted of a capital offence, and who negligently permits such person to escape, or to be rescued, shall be punished by fine not exceeding two thousand dollars.

ART. 316. Any Sheriff, or other officer, who has the legal custody of a person accused or convicted of a felony less than capital, and who negligently permits such person to escape, or to be rescued, shall be punished by fine not exceeding one thousand dollars.

ART. 317. Any Sheriff, or other officer, who has the legal custody of a person accused or convicted of a misdemeanor, and who negligently permits such person to escape, or to be rescued, shall be punished by fine not to exceed five hundred dollars.

ART. 318. Any Sheriff, or other officer, who wilfully refuses to execute any lawful process in his hands, requiring the arrest of a person accused of a felony, or wilfully omits to execute such process, whereby such person escapes, or wilfully refuses to receive in a jail under his charge, or to receive into his custody, any person lawfully committed to such jail, and ordered to be confined therein on an accusation of felony, or lawfully committed to his custody on such accusation, shall be fined not exceeding two thousand dollars.

ART. 319. Any Sheriff, or other officer, who wilfully refuses to execute any lawful process in his hands, requiring the arrest of a person accused of a misdemeanor, or wilfully omits to execute such process, whereby the accused escapes, or who wilfully refuses to receive into a jail under his charge, or to receive in his custody any person lawfully committed to such

jail on an accusation of misdemeanor, or lawfully committed to his custody on such accusation, shall be punished by fine not exceeding five hundred dollars.

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ART. 320. If any private person, appointed with his own consent, to execute a warrant of arrest, shall be guilty of any one of the offences heretofore enumerated in this Chapter, he shall be punished in the same manner as an officer in a like case.

ART. 321. If any person shall convey into any jail, any disguise, instrument, arms, or any other thing useful to aid any prisoner in escaping, with intent to facilitate the escape of a prisoner lawfully detained in such jail on an accusation of felony, or shall, in any other manner calculated to effect the object, aid in the escape of a prisoner legally confined in jail, he shall be punished by imprisonment in the Penitentiary not exceeding five years, or by fine not exceeding two thousand dollars.

ART. 322. If any person, to effect the rescue or escape of a prisoner in jail, shall break into the jail, he shall be punished by imprisonment in the Penitentiary for a term not less than two nor more than six years.

ART. 323. If any person shall, by any of the means contemplated by Article 321, aid in the escape of a person legally confined in jail upon an accusation for a misdemeanor, he shall be fined not exceeding five hundred dollars.

ART. 324. If any person, for the purpose of aiding in the escape of a prisoner so confined, shall break into the jail, he shall be fined not exceeding one thousand dollars.

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ART. 325. If any person shall wilfully aid in the escape of a prisoner from the custody of an officer by whom he is legally held in custody on an accusation for a felony, by doing any act calculated to effect that object, he shall be punished by imprisonment in the Penitentiary not exceeding seven years; and if, in aiding in the escape, he shall make use of arms, he shall be punished by imprisonment in the Penitentiary for a term not less than two nor over ten years.

ART. 326. If any person shall wilfully aid a prisoner to

escape from the custody of an officer, by whom he is legally detained in custody on an accusation for a misdemeanor, by doing any act calculated to effect that object, he shall be punished by fine, not exceeding five hundred dollars ; and if, in aiding in the escape, he shall make use of arms, he shall be punished by fine not exceeding one thousand dollars.

ART. 327. If any person shall prevent or defeat the execution of any process in a civil cause, by any means not amounting to actual resistance, but which are calculated to prevent the execution of such process, he shall be punished by fine not exceeding five hundred dollars ; evading the execution of such process is not an offence under this Article.

ART. 328. The offences enumerated in Articles 321, 322, 323, 324, 325 and 326, are complete without the actual escape of the prisoner.

ART. 329. Any person accused of the offences enumerated in Articles 321, 322, 323, 324, 325 and 326, may be prosecuted and tried, although the person escaping may be retaken, and although after being retaken, he may be brought to trial and acquitted.

ART. 330. Any person legally confined in a jail, who escapes therefrom, may be pursued, and if taken, may be again imprisoned without warrant, notwithstanding the term for which he was imprisoned may have expired at the time he was so taken, and shall remain imprisoned until discharged in due course of law, and the period elapsing between his escape and the time he is retaken, is not to be computed as a portion of the term of his imprisonment.

ART. 331. If any person shall wilfully oppose and resist an officer in executing, or attempting to execute, any lawful warrant for the arrest of another person, in a case of felony, he shall be punished by confinement in the Penitentiary for a term not exceeding five years ; and if arms be used in such resistance, he shall be punished by imprisonment in the Penitentiary not less than two nor more than seven years.

ART. 332. If any person shall wilfully oppose and resist an officer in executing, or attempting to execute, any lawful warrant for the arrest of another person in a case of misde-

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meanor, he shall be punished by fine not exceeding five hundred dollars, and if arms be used, the punishment shall be doubled.

ART. 333. If any person shall wilfully resist and oppose an officer in executing, or attempting to execute, any process in a civil cause, he shall be fined not exceeding five hundred dollars ; and if arms be used in such resistance, the punishment shall be doubled.

ART. 334. If the party against whom a legal warrant of arrest is directed in any criminal case, resist its execution, when attempted by any person legally authorized to execute the same, he shall be fined, not exceeding five hundred dollars ; and if arms be used in making the resistance, in such manner as would make him liable for an assault and battery, or assault with intent to murder, or any other offence against the person, he shall receive the highest penalty affixed by law for the commission of such offence in ordinary cases.

ART. 335. To render a person guilty of any of the offences included within the meaning of Articles 331 and 332, the warrant or process must be executed, or its execution attempted in a legal manner.

ART. 336. The word *accusation*, as used here, and in every part of this Code, means a charge made in a lawful manner against any person, that he has been guilty of some offence which subjects him to prosecution in the name of the State. A person is said to be *accused* of an offence from the time that any *criminal action* shall have been commenced against him.

A legal arrest without warrant ;

A complaint to a Magistrate ;

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

ART. 337. A person is "legally confined in jail," or "legally detained in custody," when he has been committed or arrested upon a legal warrant, or arrested in any of the modes pointed out in the Code of Criminal Procedure.

ART. 338. The word *Jail*, means any place of confinement, used for detaining prisoners.

ART. 339. By "Officer," as used in this Chapter, is meant any peace officer, as Sheriff, Deputy Sheriff, Constable of a beat, Marshal or Constable of a city or town, or any person specially authorized by warrant to arrest.

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CHAPTER IV.

FALSE CERTIFICATE, AUTHENTICATION OR ENTRY, BY AN OFFICER.

§ I.

Commissioner of Deeds, &c.

ARTICLE 340. If any person, being a Commissioner of Deeds and Depositions, who is residing out of this State, and acting as such Commissioner under authority of a law of the State, shall fraudulently certify to the execution of any instrument of writing which was never in fact acknowledged or proved before him as the same purports to have been acknowledged, or proved, he shall be punished by imprisonment in the Penitentiary, not less than two, nor more than five years.

ART. 341. By "instrument of writing," is meant any deed, conveyance, transfer, release, obligation, or other written instrument of any kind or description whatever, which such Commissioner is by the law authorized to authenticate for record.

ART. 342. If any such Commissioner shall falsely certify to any deposition purporting to have been taken before him, and to be used in any cause pending in a Court of this State, he shall be punished in the same manner as is prescribed in Article 340.

ART. 343. If any such Commissioner shall falsely certify to any affidavit purporting to have been made before him, and which he is by law authorized to take, he shall be punished as prescribed in Article 340.

§ II.

Clerk of a Court.

ART. 344. If any Clerk of a Court in this State, shall knowingly make any false entry upon the records of his Court, which may prejudice or injure the rights of any person, he shall be punished by confinement in the Penitentiary, not less than two, nor more than five years.

ART. 345. If any such Clerk shall give a false certificate, stating that any person has done any act whatever, to which he has a right to certify, or that such person is entitled to any right whatever, when such Clerk may by law, give such certificate if the same were true, he shall be punished as directed in the preceding Article.

§ III.

Authentication of Deeds or Depositions, by Notary Publics or other like Officers.

ART. 346. If any Notary Public, Chief Justice of a County, or other officer authorized by law, shall give a false certificate for the purpose of authenticating any instrument of writing for registration, he shall be punished by imprisonment in the Penitentiary, for a term not less than two, nor more than five years.

ART. 347. If any officer authorized by law to take depositions, or administer oaths within the State, shall falsely cer-

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tify that any deposition was sworn to before him, or any oath made, he shall be punished by imprisonment in the Penitentiary for a term not less than two, nor more than five years.

§ IV.

General Provisions.

ARTICLE 348. Whenever any officer, who is by law charged with the issuance, or execution of process, either in civil or criminal actions, corruptly and wilfully refuses to issue or execute such process, or corruptly and wilfully refuses to perform any other duty enjoined upon him by law, he shall, when the act or omission is not otherwise provided for or punished, be deemed guilty of a misdemeanor, and shall be fined, not exceeding five hundred dollars, and may, in the discretion of the jury, be imprisoned in the County Jail not exceeding one year.

ART. 349. Wherever, in the Code of Criminal Procedure, it is declared that an officer is guilty of an offence on account of any particular act or omission, and there is not in the Penal Code, any punishment assigned for the same, such officer shall be deemed guilty of a misdemeanor, and shall be fined, not exceeding two hundred dollars.

ART. 350. All offences committed by officers of the law, when not otherwise designated, are known under the general name of *malfeasance in office*.

ART. 351. An officer of the law is any Magistrate, Peace Officer, or Clerk of a Court.

CHAPTER V.

EXTORTION BY OFFICERS.

ARTICLE 352. If any officer, authorized by law to demand or receive fees of office, or any person employed by such officer, shall wilfully demand or receive higher fees than are allowed by law, he shall be punished by fine not exceeding one hundred dollars for each offence.

ART. 353. The preceding Article applies to all persons holding any office to which fees are attached, and to the heads of the Departments of the Government, in whose offices fees may be chargeable.

ART. 354. If any Justice of the Peace, Sheriff, or other Peace Officer, shall wilfully neglect to return, arrest, or prosecute any person committing a breach of the peace, or other crime or misdemeanor, which has been committed within his view or knowledge, or shall wilfully and knowingly absent himself from any place where such crime or misdemeanor is being committed, or is about to be committed, for the purpose of avoiding seeing or having a knowledge of the same, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than seventy-five dollars, nor more than five hundred dollars, and may, in the discretion of the Court, be removed from office. It shall be the duty of the District Courts to give this Article specially in charge to the Grand Juries.

appd.

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Unlawfully Detaining in Long Term
and Witness Fees. III. 164

TITLE XI.

OF OFFENCES AGAINST THE PUBLIC PEACE.

CHAPTER I.

UNLAWFUL ASSEMBLIES.

ARTICLE 355. An unlawful assembly is the meeting of three or more persons, with intent to aid each other by violence, either to commit an offence, or illegally to deprive any person of the enjoyment of any right.

ART. 356. If the purpose of the unlawful assembly is to prevent the holding of any public election, or to prevent any particular person or number of persons from voting at a public election, the punishment shall be that which is prescribed in Article 272.

ART. 357. If the purpose of the unlawful assembly be to oppose or prevent the execution or enforcement of any law of the State, or the lawful decree or judgment of a Court in a civil action, the punishment shall be a fine not exceeding five hundred dollars.

ART. 358. If the purpose of the unlawful assembly be to effect the rescue of a prisoner lawfully convicted of a capital offence, the punishment shall be fine, not exceeding one thousand dollars.

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

ART. 360. If the purpose of the unlawful assembly be to rescue any person arrested or imprisoned for a capital offence before trial, the punishment shall be fine, not exceeding five hundred dollars.

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

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

ART. 362a*. If the purpose of the unlawful assembly be to prevent or oppose the sitting of any lawful Court, Board of Arbitrators or Referees, the punishment shall be fine, not exceeding one thousand dollars.

ART. 363. If the purpose of the unlawful assembly be to prevent the collection of Taxes or other money due the State, the punishment shall be fine, not exceeding five hundred dollars.

ART. 364. If the purpose of the unlawful assembly be to effect any illegal object other than those mentioned in the preceding Articles of this Chapter, all persons engaged therein shall be liable to fine, not exceeding two hundred dollars.

ART. 365. No public meeting for the purpose of exercising any political, religious or other lawful rights ; no assembly for the purpose of lawful amusement or recreation, is within the meaning of this Chapter.

CHAPTER II.

RIOTS.

ARTICLE 366. If the persons unlawfully assembled together do, or attempt to do, any illegal act, all those engaged in such illegal act are guilty of riot.

* See note at the end of the Code.

ART. 367. If the purpose of a riot be to prevent the collection of Taxes or other money due the State, any persons engaged therein, shall be punished by fine, not less than two hundred dollars, and not exceeding one thousand dollars, although the purpose of the riot be not effected, and if such illegal purpose be effected, in addition thereto, imprisonment in the county jail, not exceeding two years, may be added.

ART. 368. If any person, by engaging in a riot, shall prevent the execution or enforcement of any law of the State, or the lawful decree or judgment of any Court, in a civil cause, he shall be punished by imprisonment in the county jail, not exceeding two years, and by fine, not less than two hundred, nor more than one thousand dollars.

ART. 369. If any person, by engaging in a riot, shall rescue another lawfully convicted, or under lawful sentence of death, he shall be punished by imprisonment in the Penitentiary, not less than five, nor more than ten years.

ART. 370. If any person, by engaging in a riot, shall rescue any prisoner, lawfully convicted of felony, less than capital, or lawfully under sentence for such offence, he shall be punished by imprisonment, in the Penitentiary, not less than two, nor more than seven years.

ART. 371. If any person, by engaging in a riot, shall rescue any person lawfully arrested or imprisoned, for a capital felony, he shall be punished by confinement, in the Penitentiary, not less than two, nor more than seven years.

ART. 372. If any person, by engaging in a riot, shall rescue any person lawfully arrested or imprisoned, for a felony less than capital, he shall be punished by confinement, in the Penitentiary, not exceeding five years.

ART. 373. If any person, by engaging in a riot, shall commit any illegal act, other than those mentioned in Articles 367, 368, 369, 370, 371 and 372, he shall, in addition to receiving the punishment affixed to such illegal act, by other provisions of this Code, be also punished by confinement, in the County Jail, not exceeding one year, or by fine, not exceeding one thousand dollars.

ART. 374. When the purpose of the riot was to effect any of the illegal acts mentioned in the eight preceding Articles, and such unlawful object is not effected, the punishment may, in the discretion of the Jury, be diminished to half the penalty affixed to such riot, where the illegal purpose was effected.

ART. 375. A person engaged in any riot, whereby an illegal act is committed, shall be deemed guilty of the offence of Riot, according to the character and degree of such offence, whether the said illegal act was in fact perpetrated by him, or by those with whom he is participating.

ART. 376. Where the persons, engaged in any unlawful assembly, met at first for a lawful purpose, and afterwards agreed upon an unlawful purpose, they are equally guilty of the offence defined in Article 355.

ART. 377. Where the assembly was at first lawful, and the persons so assembled afterwards agree to join in the commission of an act which would amount to a riot, if it had been the original purpose of the meeting, all those who do not retire when the change of purpose is known, are guilty of riot.

ART. 378. Any one person engaged in an unlawful assembly or riot, may be prosecuted and convicted before the others are arrested, but the indictment or information must state, and it must be proved on the trial that three or more persons were assembled, and their names given, if known, if not known, it must be so alleged.

ART. 379. The indictment or information must likewise state the illegal act which was the object of the meeting, or which they proceeded to do, if the assembly was originally lawful.

ART. 380. If any persons shall be unlawfully, or riotously assembled together, it shall be the duty of any Magistrate, or peace officer, so soon as it may come to his knowledge, to go to the place of such unlawful or riotous assembly, and command the persons assembled to disperse, and all who continue so unlawfully assembled, or engaged in a riot, after being warned to disperse, shall be punished by the addition of one-half the penalty to which they would otherwise be liable, if no such warning had been given.

CHAPTER III.

AFFRAYS AND DISTURBANCES OF THE PEACE.

ARTICLE 381. If any two or more persons shall fight together in a public place, they shall be punished by fine, not exceeding one hundred dollars.

ART. 382. If any two or more persons shall assemble in any public place without such intent as would make the meeting an unlawful assembly or riot, and shall, by loud and vociferous quarreling, disturb the inhabitants of the place in the prosecution of their lawful business, any person engaged in such disturbance shall be fined, not exceeding twenty-five dollars.

ART. 383. A public place within the meaning of the two preceding Articles, is any public road, street or alley of a town or city, inn, tavern, store, grocery, work shop, or any place to which people commonly resort for purposes of business, recreation or amusement.

TITLE XII.

OFFENCES AGAINST PUBLIC MORALS, DECENCY AND CHASTITY.

CHAPTER I.

UNLAWFUL MARRIAGE.

ARTICLE 384. If any person who has a former husband or wife living, shall marry another in this State, such person shall

be punished by imprisonment in the Penitentiary for a term not exceeding three years.

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

*amended
VII. 165* ART. 386. If any white person shall, within the State, knowingly marry a negro, or the descendant of a negro, or having so married out of the State, shall continue within this State to cohabit with such negro or descendant of a negro, such person shall be confined in the Penitentiary not less than two nor more than five years.

ART. 387. In trials for the offences named in the three preceding Articles, proof of marriage by mere reputation shall not be sufficient.

CHAPTER II.

OF INCEST AND ADULTERY.

amended ARTICLE 388. All persons who are forbidden to marry by the succeeding Articles, who shall intermarry or carnally know each other, shall be punished by imprisonment, not less than two years nor more than ten years.

VII. 165 ART. 389. No man shall marry his mother, his father's sister or half sister, his mother's sister or half sister, his daughter, the daughter of his brother or sister, or of his half brother or sister, the daughter of his son or daughter, his father's

widow, his son's widow, his wife's daughter, the daughter of his wife's son or daughter.

ART. 390. No woman shall marry her father, her father's brother or half brother, her mother's brother or half brother, her brother, her son, the son of her brother or sister, or of her half brother or sister, the son of her son or daughter, her mother's husband, after the death of her mother, her daughter's husband, after the death of her daughter, her husband's son, the son of her husband's son or daughter.

ART. 391. Upon a trial for incest, the fact of the relationship between the parties may be proved in the manner in which that fact is established in civil suits, and proof of cohabitation or carnal knowledge, shall be, in all cases, sufficient, without proof of marriage.

ART. 392. Every man and woman who shall live together in adultery, shall be punished by fine, not less than one hundred nor more than one thousand dollars.

ART. 393. It is sufficient to prove in trials for living in adultery that the parties cohabit together, and that one of them is married to some other person. The proof of marriage, in such cases, may be made by the testimony of any person who was present at such marriage, or who has known the husband and wife to live together as married persons.

ART. 394. Where two persons live together in a state of cohabitation, one of them being married, they are both guilty of adultery according to the sense in which the term is here used, though only one of them be married.

ART. 395. A single act of adultery is not sufficient to bring the offence within the meaning of this Chapter, unless proof be made that the parties live together.

CHAPTER III.

OF DISORDERLY HOUSES.

~~ART. 396.~~ ART. 396. A disorderly house is one kept for the purpose of public prostitution, or as a common resort for prostitutes, vagabonds or free negroes.

~~ART. 397.~~ ART. 397. Any room or part of a building appropriated for either of the purposes above enumerated, is a disorderly house within the meaning of this Chapter.

~~ART. 398.~~ ART. 398. Any person who shall keep a disorderly house as above defined, shall be punished by fine, not exceeding one hundred dollars.

CHAPTER IV.

OF INDECENT EXHIBITIONS AND PUBLICATIONS.

ARTICLE 399. If any person shall make, publish or print, any indecent and obscene print, picture, or written composition, manifestly designed to corrupt the morals of youth, or shall designedly make any obscene and indecent exhibition of his own or the person of another, in public, he shall be fined, not exceeding one hundred dollars.

*Disturbance of Grace and Dead
Bodies. III. 166.*

TITLE XIII.

OF OFFENCES AGAINST PUBLIC POLICY AND ECONOMY.

CHAPTER I.

ILLEGAL BANKING AND PASSING SPURIOUS MONEY.

ARTICLE 400. If any person within the State shall issue any bill, promissory note, check, or other paper intended to circulate as money, he shall be fined, not less than ten dollars, nor more than fifty dollars, for each bill, promissory note, check, or other paper so issued.

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

ART. 402. Any person who may bring into this State any bank bill, purporting to be issued by any bank in any other State or Territory of the Union, or in any foreign country, and shall sign or endorse the same to be circulated as money in this State, shall be deemed guilty of the offence mentioned in Article 400.

ART. 403. If any person shall fraudulently pass or transfer, or offer to pass or transfer, any paper purporting to be bank paper, and to be issued by any bank which having once existed, has since broken, or the money of the same become valueless, he shall be punished by confinement in the Penitentiary not more than three years, or by fine, not exceeding one thousand dollars.

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CHAPTER II.

OF LOTTERIES AND RAFFLES.

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

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

ART. 406. If any person shall establish a raffle for, or dispose by raffle, of any estate, real or personal, exceeding five hundred dollars in value, he shall be fined, not less than one hundred, nor more than one thousand dollars.

ART. 407. If any person shall offer for sale, or keep for sale, any ticket or part ticket in any raffle, of estate real or personal, exceeding five hundred dollars in value, he shall be fined, not less than ten nor more than fifty dollars.

CHAPTER III.

OF SELLING TO INDIANS AND FREE PERSONS OF COLOR.

ARTICLE 408. If any person shall sell, give or barter, any ardent spirits, arms or ammunition, to an Indian of the wild or unfriendly tribes, or shall sell, barter or give to a free person of color, any ardent spirits, arms or ammunition, he shall be fined, not less than ten, nor more than one hundred dollars. Justices of the Peace and Mayors shall have jurisdiction under this Chapter.

CHAPTER IV.

GAMING.

ARTICLE 409. If any person shall play at any game with cards, at any house for retailing spirituous liquors, store-house, tavern, inn, or any other public house, or in any street, highway, or other public place, or in any out-house where people resort, he shall be fined not less than ten nor more than twenty-five dollars.

ART. 410. All houses commonly known as *public*, and all gaming houses, are included within the meaning of the preceding Article. Any room attached to such public house, and commonly used for gaming, is also included, whether the same be kept closed or open. A private room of an inn or tavern is not within the meaning of a public place, unless such room is commonly used for gaming.

ART. 411. Upon the trial of any person accused of offending against the provisions of the two preceding Articles, either in the District Court, or Justices' or Mayors' Courts, it shall not be necessary to prove that any money, or article of value, or the representative of either, was bet at such game. The offence is complete without such proof: provided nothing herein contained shall prevent the person accused from showing affirmatively that the game so played was for recreation and amusement, and not for the purpose of gaming.

*Repeals
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ART. 412. If any person shall keep or exhibit, for the purpose of gaming, any gaming table or bank of any name or description whatever, or any table or bank used for gaming which has no name, or shall be in any manner interested in keeping or exhibiting such table or bank, at any place whatever, he shall be fined not less than twenty-five dollars, nor more than one hundred dollars.

ART. 413. It being intended by the foregoing Article to include every species of gaming device known by the name of table or bank of every kind whatever, this provision shall be construed to include any and all games which in common language are said to be *dealt, kept or exhibited*.

ART. 414. Lest any misapprehension should arise as to

whether certain games are included within the meaning of the foregoing Articles, it is declared that the following games are within the meaning and intention of said Articles, viz : "Faro ;" "Monte ;" "Viente-un ;" "Rouge et Noir ;" "Roulette ;" "A. B. C. ;" "Chuck Luck ;" "Keno ;" "Pool," and "Rondo ;" but the enumeration of these games specially, shall not exclude any other properly within the meaning of the two preceding Articles. Any game played for money upon a billiard table, or table resembling a billiard table, other than the game of billiards licensed by law ; is punishable under the provisions of this Chapter.

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

ART. 416. In proceedings before the District Court, or before Justices of the Peace, Mayors and Recorders, on the trial of offences under Articles 412, 413 and 414, it is sufficient to prove that any game therein mentioned was *played, dealt or exhibited*, without proving that money or other articles of value was won or lost thereon.

ART. 417. The words "played" and "dealt", have the meaning attached to them in common language. The word "exhibited" is intended to signify the act of displaying the bank or game, for the purpose of obtaining betters.

ART. 418. If any person shall bet at any gaming table, or bank, such as are in the six preceding Articles mentioned, he shall be fined not less than ten, nor more than twenty-five dollars.

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

ART. 420. If any person shall rent to another a room or house, for the purpose of being used as a place for playing,

dealing, or exhibiting, any of the games prohibited by the provisions of this Chapter, he shall be fined not less than twenty-five, nor more than one hundred dollars. It shall be presumed that a room, or house, was let for the purpose of being used for gaming, whenever the lessor knew that to be the object for which it was rented.

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III. 166.

CHAPTER V.

BETTING ON ELECTIONS.

ARTICLE 421. If any person shall, before the hour of five o'clock, of the day of any public election, held within this State, wager or bet, in any manner whatever, upon the result of such election, he shall be fined, not less than twenty-five dollars, nor more than one thousand dollars.

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III. 167.

ART. 422. A public election within the meaning of the preceding Article, is any Election for a public officer under the authority of the Constitution and Laws of the United States, or of this State.

ART. 423. The bet or wager may be of money, or of any article of value ; and any device in the form of purchase, or sale, or in any other form, made for the purpose of concealing the true intention of the parties, is equally within the meaning of a bet, or wager.

Night of Officers to arrest or prosecute in Gaming Places. III. 167.
Retailling Liqueurs without Licence III. 167.
Peddling without Licence III. 169.

TITLE XIV.

OF OFFENCES AFFECTING PUBLIC HEALTH.

CHAPTER I.

OF OCCUPATIONS INJURIOUS TO HEALTH.

ARTCLE 424. If any person shall carry on any trade, or business, injurious to the health of those who reside in the vicinity, or shall suffer any substance which shall have that effect to remain on premises in his possession, he shall be punished by fine, not less than ten dollars, nor more than one hundred dollars, and each separate day of carrying on such business or trade, or of permitting such substance to remain on the premises, shall be considered a separate offence.

CHAPTER II.

SALE OF UNWHOLESONE FOOD, DRINK, OR MEDICINE.

ARTCILE 425. If any person shall knowingly sell the flesh of any animal, dying otherwise than by slaughter, or slaughtered when diseased; or shall sell any kind of corrupted, diseased, or unwholesome substance, whether for food or drink, without making the same fully known to the buyer, he shall be fined not less than twenty, nor more than one hundred dollars.

ART. 426. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any spirituous, vinous or malt liquor, intended for drink, with any substance injurious to health, he shall be punished by fine, not less than fifty dollars, nor more than five hundred dollars.

ART. 427. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such manner as to change the operation of such drug or medicine, or render the same worthless, or injurious to health, he shall be punished by fine, not less than fifty dollars, nor more than five hundred dollars.

TITLE XV.

OF OFFENCES AFFECTING PROPERTY HELD IN COMMON FOR THE USE OF THE PUBLIC.

CHAPTER I.

OBSTRUCTION OF NAVIGABLE STREAMS.

ARTICLE 428. If any person shall obstruct the navigation of any stream, which can be navigated by steam, keel, or flat boats, by cutting and felling trees, or by building a dyke, mill-dam, or other obstruction of a like kind, he shall be fined, not less than fifty, nor more than five hundred dollars.

CHAPTER II.

OBSTRUCTING PUBLIC ROADS AND BRIDGES.

ARTICLE 429. If any person shall erect any fence, or building, or dig any ditch, or throw up any mound of earth, in any street, or public road, or square, or do any other act not authorized by law, that shall obstruct the public use thereof, or shall unlawfully destroy, injure or obstruct the passage over any bridge erected thereon, he shall be fined, not less than three, nor more than ten dollars, for each day such unlawful obstruction shall remain.

ART. 430. The County Courts may make such regulations as they deem proper, relative to removing obstructions from public roads and bridges; and all persons guilty of any offence named in the preceding Article shall also be subject to such regulations.

TITLE XVI.

OF OFFENCES AGAINST TRADE AND COMMERCE
AND THE CURRENT COIN.

CHAPTER I.

OF FORGERY AND OTHER OFFENCES AFFECTING WRITTEN INSTRUMENTS.

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

charged, or defeated any *pecuniary obligation*, or would have transferred, or in any manner have affected any *property* whatever.

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

ART. 433. If any person be guilty of forgery, he shall be punished, by confinement in the Penitentiary, not less than two years, nor more than seven years.

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

ART. 435. He is guilty of making or of altering, as the case may be, under Articles 431 and 432, who, knowing the illegal purpose intended, shall write, or cause to be written, the signature, or the whole or any part of the forged instrument. All persons engaged in the illegal act are deemed guilty of forgery.

ART. 436. It is forgery to make, with intent to defraud or injure, a written instrument, by filling up over a genuine signature, or by writing on the opposite side of a paper, so as to make the signature appear as an indorsement.

ART. 437. When the person making, or altering an instrument in writing, acts under an authority which he has good reason to believe, and actually does believe, to be sufficient, he is not guilty of forgery, though the authority be in fact insufficient or void.

ART. 438. The word "alter," in the definition of forgery, means to erase or obliterate any word, letter, or figure, to extract the writing altogether, or to substitute other words, letters, or figures, for those erased, obliterated or extracted, to add any other word, letter, or figure, to the original instrument, or to make any other change whatever, which shall have the effect to create, increase, diminish, discharge, or defeat, a pecuniary obligation, or to transfer, or in any other way affect any property whatever.

ART. 439. The instrument must purport to be the act of "*another*," and within the meaning of this word, as used in defining forgery, are included this State, the United States, or either of the States or Territories of the Union; all the several branches of the government of either of them; all public and private bodies, politic and corporate; all Courts; all officers, public or private, in their official capacity; all partnerships in professions or trades; and all other persons, whether real or fictitious, except the person engaged in the forgery.

ART. 440. "Pecuniary obligation" means every instrument having money for its object, and every obligation for the breach of which a civil action for damages may be lawfully brought.

ART. 441. By an instrument, which would "have transferred, or in any manner have affected" property, is meant every species of conveyance, or undertaking in writing, which supposes a right in the person purporting to execute it, to dispose of, or change the character of property of every kind, and which can have such effect when genuine.

ART. 442. The false making, or alteration, to constitute forgery, must be done with intent to injure or defraud, and the injury must be such as affects one pecuniarily, or in relation to his property.

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

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

ART. 445. If any person shall, knowingly, have in his possession, any instrument of writing, the making of which is by law an offence, with intent to use or pass the same as true, he shall be punished by confinement, in the Penitentiary, not exceeding three years.

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ART. 446. Upon the trial of any indictment for the forgery of any bank bill, or for passing, or attempting to pass, any such bill as true, or for knowingly having in possession any such forged bank bill, evidence that bills or notes, purporting to be issued by any bank, are commonly received as currency, or proof of the existence of such bank by parol testimony, shall be deemed sufficient to show its legal establishment and existence.

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

ART. 448. If any person, with intent to defraud, shall substitute one instrument of writing for another, and by this means induce any person to sign an instrument materially different from that which he intended to sign, he shall be

punished by imprisonment, in the Penitentiary, not less than two, nor more than five years.

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

ART. 450. If any person shall falsely personate another, whether bearing the same name or not, and in such assumed character shall, before any officer authorized by law to authenticate instruments of writing for registration, acknowledge the execution of any instrument of writing, purporting to convey, or in any manner affect, an interest in property, such instrument purporting to be the act of the person whose name is so assumed, and the acknowledgement thereof being such as would entitle the instrument to be registered, he shall be punished, by confinement in the Penitentiary, not less than two, nor more than ten years.

CHAPTER II.

OF COUNTERFEITING AND DIMINISHING THE VALUE OF THE CURRENT COIN.

ARTICLE 451. He is guilty of counterfeiting, who makes, in the semblance of true gold or silver coin, any coin of whatever denomination, having in its composition a less proportion of the precious metal of which the true coin intended to be imitated is composed, than is contained in such true coin, with intent that the same should be passed in this State or elsewhere.

ART. 452. He is also guilty of counterfeiting, who, with like intent, alters any coin of lower value, so as to make it resemble coin of higher value.

ART. 453. The resemblance between the true and the false coin need not be perfect to constitute the offence of counterfeiting.

ART. 454. Any person who shall counterfeit any gold or silver coin, shall be punished by imprisonment in the Penitentiary not less than five, nor more than ten years.

ART. 455. If any person, with intent to defraud, shall pass, or offer to pass, as true, or shall bring into this State, or have in his possession, with intent to pass as true, any counterfeit coin, knowing the same to be counterfeit, he shall be punished by imprisonment, in the Penitentiary, not less than two, nor more than five years.

ART. 456. If any person, with the intention of committing the offence of counterfeiting, or of aiding therein, shall make, or repair, or shall have in his possession, any die, mould, or other instrument whatever, designed or adapted, or usually employed for making coin, or shall prepare, or have in his possession, any base metal prepared for coinage, with intent that the same may be used for the purpose of counterfeiting, he shall be punished, by imprisonment in the Penitentiary, not less than two, nor more than five years.

ART. 457. If any person shall, with intent to profit thereby, diminish the weight of any gold or silver coin, and shall afterwards pass it for the value it would have had before it was so diminished, or send it to any place, whether in the State or out of it, with intent that the same may be passed, he shall be punished, by imprisonment in the Penitentiary, not exceeding three years.

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ART. 458. By the gold or silver coin, mentioned in this Chapter, is meant any piece of gold or silver of which one of those metals is the principal component part, and which passes as money in the United States, either by law or usage, whether the same be of the coinage of the United States or of any foreign country.

ART. 459. It is sufficient to constitute the offence of passing, or attempting to pass, under the provisions of this Chapter, if the counterfeit coin be delivered or offered to another, with the intention of defrauding, or enabling such other person to defraud, although such counterfeit coin be not delivered or offered at the full value which it would bear if genuine.

CHAPTER III.

OF OFFENCES WHICH AFFECT FOREIGN COMMERCE.

ART. 460. If any person shall export from this State, or ship, for the purpose of exportation to any one of the United States, or to any foreign port, any article of commerce, which, by any law of the State, may be required to be inspected by a public inspector, without having caused such inspection to be made according to law, he shall be fined, not exceeding one hundred dollars.

ART. 461. If any one shall counterfeit, or alter the mark, brand, or stamp, directed by any law of the State to be put on any article of commerce, or on the box, cask, or package, containing the same, he shall be punished by fine, not exceeding one thousand dollars, or by imprisonment in the County Jail, not exceeding one year.

ART. 462. If any person shall, with intent to defraud, put into any hogshead, barrel, cask or keg, or into any bale, box or package, containing merchandize or other commodity usually sold by weight, any article whatever of less value than the merchandize with which such bale, box, package, hogshead, barrel, cask or keg, is apparently filled, or with intent to defraud, shall sell or barter, give in payment, or expose to sale, or ship for exportation, any such hogshead, barrel, cask, keg, box, bale, or package of merchandize, or

other commodity, with any such article of inferior value concealed therein, he shall be punished, by confinement in the County Jail, not exceeding one year, or by fine, not exceeding one thousand dollars.

ART. 463. If any person shall, with intent to deceive and defraud, conceal within any hogshead, cask, barrel, bale, keg, or package containing merchandize, or commodity, of inferior quality to that with which such hogshead, cask, barrel, bale, keg, or package, is apparently filled, he shall be fined, not exceeding five hundred dollars.

ART. 464. If any person shall cause insurance to be made in this State, on any merchandize, or other commodity, represented to be already shipped, or about to be shipped, at any place, whether within this State or out of it, and shall, with intent to defraud the insurer, ship articles of value less than one-half the represented value of those insured, or of a different kind from those insured, he shall be punished, by fine, in any sum not exceeding the amount for which such merchandize or commodity may be insured.

ART. 465. The municipal authorities of incorporated towns and cities being shipping ports, may make such regulations as are deemed proper for the punishment of keepers of boarding houses and others, who knowingly lodge, entertain, or conceal, seamen who have deserted from any merchant vessel in their respective ports. But they shall not affix a higher penalty for such offence than a fine of fifty dollars, or imprisonment, in Jail, for thirty days.

CHAPTER IV.

FALSE WEIGHTS AND MEASURES.

ARTICLE 466. If any person shall use a false balance, weight, or measure, in weighing or measuring anything what-

ever, purchased, or sold by himself, or bartered, shipped, or delivered by him for sale, or bartered, or pledged, or given in payment, knowing the same to be false, and with intent to defraud, he shall be punished, by fine, not exceeding three hundred dollars.

ART. 467. A false weight or measure is such as is not in conformity with the standard which is or may be established by a law of this State.

ART. 468. When a warrant of arrest is issued in case of offences under this Chapter, the Magistrate shall direct the false balances, weights, or measures, to be seized, and kept by the Sheriff until the trial of the defendant, and, in case of conviction, the same shall be destroyed.

CHAPTER V.

OF OFFENCES BY PUBLIC WEIGHERS.

ARTICLE 469. If any person, appointed Public Weigher by authority of any law of the State, shall fraudulently use any false balance or instrument for weighing, or shall, in the exercise of his official duties, fraudulently give the wrong weight of any article weighed by him, he shall be punished, by fine, not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment, in the County Jail, not exceeding one year.

CHAPTER VI.

MISCELLANEOUS OFFENCES.

ARTICLE 470. If any Notary Public shall make any false certificate as to the proof or acknowledgement of any instrument of writing relating to commerce or navigation, to which, by law, he is authorized to certify; or shall make any false certificate as to the proof or acknowledgement of any letter of attorney, or other instrument of writing relating to commerce or navigation, to which he may by law certify, he shall be punished by confinement, in the Penitentiary, not less than two years, nor more than five years.

ART. 471. If any Notary Public shall make any false declaration or protest, respecting any matter or thing relating to commerce or navigation, or to commercial instruments, where, by law, he is authorized to make such declaration or protest, he shall be punished as prescribed in the preceding Article.

ART. 472. The provisions of the two preceding Articles are intended to embrace all Acts of a Notary Public, done in an official capacity, within the proper sphere of his duties, and which arise out of transactions respecting navigation or commerce.

ART. 473. If any master, or other officer of a vessel, with intent to defraud, shall make a false declaration or protest, as to the loss or damage of any vessel or cargo, he shall be punished by confinement, in the Penitentiary, not less than two, nor more than five years.

ART. 474. If any person, with intent to defraud, shall make, or cause to be made, any false entry in any book kept as a book of accounts; or shall, with like intent, alter, or cause to be altered, any item of an account kept or entered in such book, he shall be fined, not less than one hundred dollars, nor more than one thousand dollars, or be punished, by confinement in the Penitentiary, not exceeding three years.

*ansd.
W. J. H.*

TITLE XVII.

OF OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

CHAPTER I.

OF ASSAULT AND ASSAULT AND BATTERY.

§I.

General Provisions and Definitions.

ARTICLE 475. The use of any unlawful violence upon the person of another, with intent to injure him, whatever be the means or the degree of violence used, is an assault and battery. Any attempt to commit a battery, or any threatening gesture showing in itself or by words accompanying it, an immediate intention, coupled with an ability to commit a battery, is an assault.

ART. 476. When an injury is caused, by violence to the person, the intent to injure is presumed, and it rests with the person inflicting the injury to show the accident or innocent intention. The injury intended may be, either bodily pain, constraint, a sense of shame, or other disagreeable emotion of the mind.

ART. 477. An assault, or assault and battery, may be committed, though the person actually injured thereby was not the person intended to be injured.

ART. 478. An assault, or an assault and battery, may be committed by the use of any part of the body of the person

committing the offence, as of the hand, foot, head ; or by the use of any inanimate object, as a stick, knife, or any thing else capable of inflicting the slightest injury ; or by the use of any animate object, as by throwing one person against another, or driving a horse or other animal against the person.

ART. 479. Any means used by the person assaulting, as by spitting in the face, or otherwise, which is capable of inflicting an injury, comes within the definition of an assault, or an assault and battery, as the case may be.

ART. 480. An assault is either a simple assault, an aggravated assault, or an assault with intent to commit some other offence.

ART. 481. Assaults and assaults and batteries, as here spoken of, have reference to such offences when committed against a free white person.

ART. 482. By the terms "coupled with an ability to commit," as used in Article 475, is meant,

1. That the person making the assault must be in such a position that, if not prevented, he may inflict a battery upon the person assailed.

2. That he must be within such distance of the person so assailed as to make it within his power to commit the battery by the use of the means with which he attempts it.

It follows, that one who is, at the time of making an attempt to commit a battery, under such restraint as to deprive him of the power to act, or who is at so great a distance from the person assailed, as that he cannot reach his person by the use of the means with which he makes the attempt, is not guilty of an assault. Pointing an unloaded gun, or the use of any like means with which no injury can be inflicted, cannot constitute an assault.

ART. 483. Violence used to the person does not amount to an assault or battery in the following cases :

1. In the exercise of the right of moderate restraint or correction given by law to the parent over the child, the guardian over the ward, the master over his servant or apprentice, the teacher over the scholar.

2. For the preservation of order in a meeting for religious, political, or other lawful purposes.
3. For the preservation of the peace, or to prevent the commission of offences.
4. In preventing or interrupting an intrusion upon the lawful possession of property.
5. In making a lawful arrest and detaining the party arrested, in obedience to the lawful order of a Magistrate or Court, and in overcoming resistance to such lawful order.
6. In self-defence, or the defence of another, against unlawful violence offered to his person or property.

ART. 484. In all the cases mentioned in the preceding Article, where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.

ART. 485. No verbal provocation justifies an assault and battery, but insulting and abusive words may be given in evidence in mitigation of the punishment affixed to the offence.

ART. 486. The word battery is used in this Code in the same sense as "*assault and battery*."

§ II.

Punishment of Simple Assault and Battery.

ARTICLE 487. The punishment for a simple assault, or for assault and battery, unattended with circumstances of aggravation, shall be a fine, not to exceed one hundred dollars.

CHAPTER II.

OF AGGRAVATED ASSAULTS AND BATTERIES.

§ I.

Definition of Aggravated Assaults and Batteries.

ARTICLE 488. An assault or battery becomes aggravated when committed under any of the following circumstances :

1. When committed upon an officer in the lawful discharge of the duties of his office, if it was known or declared to the offender that the person assaulted was an officer discharging an official duty.
2. When committed in a Court of Justice, or in any place of religious worship, or in any place where persons are assembled for the purpose of innocent amusement.
3. When the person committing the offence, goes into the house of a private family and is there guilty of assault and battery.
4. When committed by a person of robust health or strength, upon one who is aged or decrepid.
5. When committed upon the person of a female or child.
6. When the instrument or means used is such as inflicts disgrace upon the person assaulted, as an assault or battery with a whip or cowhide.
7. When a serious bodily injury is inflicted upon the person assaulted.
8. When committed with deadly weapons, under circumstances not amounting to an intent to murder or maim.
9. When committed with premeditated design, and by the use of means calculated to inflict great bodily injury.

ART. 489. The circumstances of aggravation mentioned in the preceding Article are of different degrees, and the jury are to consider these circumstances in forming their verdict and assessing the punishment.

ART. 490. Upon an indictment for an aggravated assault or battery, the jury may find the defendant guilty of simple assault, or assault and battery, and assess the punishment therefor, as prescribed in this Code.

§ II.

Punishment.

ARTICLE 491. The punishment for an aggravated assault, or battery, shall be fine, not less than one hundred, nor more than one thousand dollars, and the jury may, in addition thereto, find a verdict for the imprisonment of the defendant, in the County Jail, not exceeding two years.

CHAPTER III.

OF ASSAULTS, WITH INTENT TO COMMIT MURDER, RAPE, ROBBERY, OR OTHER CRIME.

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ARTICLE 492. If any person shall assault another, with intent to commit the offence of maiming, he shall be punished, by fine, not exceeding one thousand dollars, or by imprisonment, in the Penitentiary, not exceeding three years.

ART. 493. If any person shall assault another, with intent to murder, he shall be punished, by confinement, in the Penitentiary, not less than two years, nor more than seven years. If the assault be made with a bowie knife, or dagger, the punishment shall be doubled.

ART. 494. If any person shall assault a woman, with intent to commit the offence of rape, he shall be punished, by confinement in the Penitentiary, not less than two years, nor more than seven years.

ART. 495. If any person shall assault another, with intent to commit the offence of robbery, he shall be punished, by confinement in the Penitentiary, not exceeding three years. *amend.* *III. 121*

ART. 496. If any person, in attempting to commit burglary, shall assault another, he shall be punished, by confinement in the Penitentiary, not exceeding three years. *amend.* *III. 121*

ART. 497. Whenever it appears upon a trial for assault with intent to murder, that the offence would have been murder had death resulted therefrom, the person committing such assault is deemed to have done the same with that intent.

ART. 498. The jury, in every case arising under this Chapter, may acquit the defendant of the offence charged in the indictment, and may, according to the facts of the case, find the defendant guilty of an aggravated assault, or of assault and battery, or of a simple assault, and affix the proper penalty to which such offence is liable by law.

ART. 499. An assault, with intent to commit any other offence, is constituted by the existence of the facts which bring the offence within the definition of an assault, coupled with an intention to commit such other offence, as of maiming, murder, rape, or robbery.

CHAPTER IV.

OF MAIMING, DISFIGURING AND CASTRATION.

§ I.

Definition.

ARTICLE 500. To maim, is to cut off or otherwise deprive a person of the hand, arm, finger, foot, leg, nose or ear ; to put out an eye, or in any way to deprive the person of any other member of his body.

ART. 501. To disfigure, is to place any mark, by means of a knife, or other instrument, upon the face or other part of the person.

ART. 502. To castrate, is to deprive any person of either, or both, or of any part of either or both of the testicles.

§ II.

Punishment.

ARTICLE 503. If any person shall commit the offence of maiming, he shall be punished, by confinement in the Penitentiary, not less than two nor more than ten years.

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VII. 171 ART. 504. If any person shall disfigure another, he shall be punished, by confinement in the Penitentiary, not exceeding five years, or by fine, not less than two thousand dollars.

ART. 505. If any person shall commit the offence of castration, he shall be punished, by confinement in the Penitentiary, not less than five, nor more than fifteen years.

ART. 506. The offence of maiming, or of castration, when committed upon a slave or free person of color, shall be punished in the same manner as if committed upon a free white person.

ART. 507. Upon the trial of any indictment for either of the offences named in this Chapter, the jury may, according to the facts of the case, acquit the defendant of the offence charged, and find him guilty of an assault with intent to commit the offence charged in the indictment.

CHAPTER V.

OF FALSE IMPRISONMENT, KIDNAPPING AND ABDUCTION.

§ I.

False Imprisonment.

ARTICLE 508. False imprisonment is the willful detention of another against his consent, and where it is not expressly authorized by law, whether such detention be effected by an assault, by actual violence to the person, by threats, or by any other means which restrains the party so detained from removing from one place to another, as he may see proper.

ART. 509. The assault or violence may be such as is spoken of in defining the offence of assault and battery.

ART. 510. The impediment must be such as is in its nature calculated to detain the person, and from which he cannot by ordinary means relieve himself.

ART. 511. The threat must be such as is calculated to operate upon the person threatened, and inspire a just fear of some injury to his person, reputation or property, or to the person, reputation or property of another ; and the jury are to consider the age, sex, condition, disposition or health of the person threatened, in determining whether the threat was sufficient to intimidate, and prevent such person from removing beyond the bounds in which he was detained.

ART. 512. It is not an offence to detain a person in the cases and for the objects mentioned in Article 483, as justifying the use of force, but whenever it is assumed as a justification that such circumstances existed, it must be shown also that the detention was necessary to effect any of the objects set forth in said Article.

ART. 513. Any person who shall be guilty of the offence of false imprisonment, shall be fined not exceeding five hundred dollars, and may be confined in the County Jail not exceeding one year.

ART. 514. If any officer or other person shall hold or detain, in any manner, any one who has been ordered to be discharged by any Court or Judge, upon the hearing of a writ of habeas corpus, be shall suffer double the punishment prescribed in the preceding Article.

§ II

Of Kidnapping.

amend.
VII. 171
ARTICLE 515. When any person is falsely imprisoned for the purpose of being removed from the State, or for the purpose of being sold as a slave, (the person being free,) or if a minor, under the age of seventeen years, for the purpose of being concealed or taken from the lawful possession of a parent or guardian, such false imprisonment is kidnapping. If the person kidnapped be under the age of fifteen years, it is not necessary that there should be force in order to constitute the offence of kidnapping.

ART. 516. The punishment of kidnapping shall be imprisonment, in the Penitentiary, not less than two, nor more than five years, or fine, not exceeding two thousand dollars.

ART. 517. If the person so falsely imprisoned be actually removed out of the State, or sold as a slave, the punishment shall be imprisonment, in the Penitentiary, not less than two nor more than ten years.

§ III.

Of Abduction.

ARTICLE 518. Abduction is the false imprisonment of a woman with intent to force her into a marriage, or for the purpose of prostitution.

ART. 519. If a female under the age of fourteen be taken, for the purpose of marriage or prostitution, from her parent, guardian, or other person having the legal charge of her, it is abduction whether she consent or not, and although a marriage afterwards take place between the parties.

ART. 520. The offence of abduction is complete if the female be detained as long as twelve hours, though she may afterwards be relieved from such detention without marriage or prostitution.

ART. 521. Any person who shall be guilty of abduction, shall be punished, by confinement in the Penitentiary, not exceeding five years, or by fine, not exceeding two thousand dollars. If, by reason of such abduction, a woman be forced into marriage, the punishment shall be confinement in the Penitentiary, not less than two, nor more than five years ; and if, by reason of such abduction, a woman be prostituted, the punishment shall be confinement, in the Penitentiary, not less than three, nor more than ten years.

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ART. 522. The jury in a prosecution for kidnapping or abduction, may find a verdict acquitting the defendant of the

offence charged in the indictment, and finding him guilty of false imprisonment, if the facts authorize such verdict, and in such case they shall affix the penalty prescribed for the last named offence.

CHAPTER VI.

OF RAPE.

ARTICLE 523. Rape is the carnal knowledge of a woman without her consent, obtained by force, threats, or fraud, or the carnal knowledge of a female under the age of ten years, with or without consent, and with or without the use of force, threats or fraud.

ART. 524. The definition of force, as applicable to assault and battery, applies also to the crime of rape, and it must have been such as might reasonably be supposed sufficient to overcome resistance, taking into consideration the relative strength of the parties, and other circumstances of the case.

ART. 525. The threat must be such as might reasonably create a just fear of death, or great bodily harm, in view of the relative condition of the parties, as to health, strength, and all other circumstances of the case.

ART. 526. The fraud must consist in the use of some stratagem by which the woman is induced to believe that the offender is her husband, or in administering without her knowledge or consent, some substance producing unnatural sexual desire, or such stupor as prevents or weakens resistance, and committing the offence while she is under the influence of such substance. It is a presumption of law which cannot be rebutted by testimony, that no consent was given under the circumstances mentioned in this Article.

ART. 527. Penetration only is necessary to be proved upon a trial for rape.

ART. 528. No person under the age of fourteen, at the time the offence is charged to have been committed, can be convicted of rape, or assault with intent to commit the offence.

ART. 529. Whoever shall be guilty of rape, shall be punished by confinement, in the Penitentiary, not less than five, nor more than fifteen years.

ART. 530. If it appear on the trial of an indictment for rape, that the offence, though not committed, was attempted by the use of any of the means spoken of in Articles 524, 525, and 526, but not such as to bring the offence within the definition of an assault with intent to commit rape, the jury may find the defendant guilty of an attempt to commit the offence, and affix the punishment prescribed in Article 494.

CHAPTER VII.

OF ABORTION.

ARTICLE 531. If any person shall designedly administer to a pregnant woman, with her consent, any drug or medicine, or shall use towards her any violence, or any means whatever, externally or internally applied, and shall thereby procure an abortion, he shall be punished, by confinement, in the Penitentiary, not less than two, nor more than five years ; if it be done without her consent the punishment shall be doubled.

ART. 532. Any person who furnishes the means for procuring an abortion, knowing the purpose intended, is guilty as an accomplice.

ART. 533. If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to procure abortion, provided it be shown that such means were calculated to produce that result, and shall receive one-half the punishment prescribed in Article 531.

ART. 534. If the death of the mother is occasioned by an abortion so produced, or by an attempt to effect the same, it is murder.

ART. 535. If any person shall, during parturition of the mother, destroy the vitality or life in a child, in a state of being born, and before actual birth, which child would otherwise have been born alive, he shall be punished, by confinement in the Penitentiary, for life, or any period not less than five years, at the discretion of the jury.

ART. 536. Nothing contained in this Chapter shall be deemed to apply to the case of an abortion procured or attempted to be procured by medical advice for the purpose of saving the life of the mother.

CHAPTER VIII.

OF ADMINISTERING POISONOUS AND INJURIOUS POTIONS.

ARTICLE 537. If any person shall mingle any poison, or any other noxious portion or substance, with any drink, food or medicine, with intent to kill or injure any other person, or shall wilfully poison any spring, well, cistern, or reservoir of water, with such intent, he shall be punished, by imprisonment in the Penitentiary, not less than two, nor more than ten years.

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VII. 172* **ART. 538.** If any person shall, with intent to injure, cause another person to inhale or swallow any substance injurious to health, or to any of the functions of the body, he shall be punished, by confinement in the Penitentiary, not exceeding five years ; if such substance was administered with the intent to kill, he shall be punished, by confinement in the Penitentiary, not less than two, nor more than five years.

ART 539. If, by reason of the commission of the offences

named in the two preceding Articles, the death of a person be caused within one year, the offender shall be deemed guilty of murder, and punished accordingly.

ART. 540. If any person engaged in the practice of medicine, and claiming to be a physician, shall, by the use of any noxious substance, administered in a grossly ignorant manner, produce death, or other great bodily injury, he shall be punished for the offence, as any other person would be who had given such substance, knowing it to be injurious, and intending to kill or injure.

CHAPTER IX.

OF HOMICIDE.

ARTICLE 541. Homicide is the destruction of the life of one human being by the act, agency, procurement, or culpable omission of another.

ART. 542. The destruction of life must be complete by such act, agency, procurement, or omission ; but although the injury which caused death might not, under other circumstances, have proved fatal, yet if such injury be the cause of death, without its appearing that there has been any gross neglect, or manifestly improper treatment of the person injured, it is homicide.

ART. 543. The foregoing Article, in what is said of gross neglect or improper treatment, has reference to the acts of some person other than him who inflicts the first injury, as of the physician, nurse, or other attendant. If the person inflicting the injury, which makes it necessary to call aid in preserving the life of the person injured, shall wilfully fail or neglect to call such aid, he shall be deemed equally guilty as if the injury were one which would inevitably lead to death.

ART. 544. No person shall be convicted of any grade of homicide unless the body of the deceased, or portions of it, are found, and sufficiently identified to establish the fact of killing.

ART. 545. The person upon whom the homicide is alleged to have been committed, must be in existence by actual birth. It is homicide, however, to destroy human life actually in existence, however frail such existence may be, or however near extinction from other causes.

ART. 546. Although it is necessary, to constitute homicide, that it shall result from some act of the party accused, yet, if words be used which are reasonably calculated to produce, and do produce an act which is the immediate cause of death, it is homicide ; as, for example, if a blind man, a stranger, a child, or a person of unsound mind, be directed, by words, to a precipice, or other dangerous place, where he falls and is killed ; or if one be directed to take any article of medicine, food, or drink, known to be poisonous, and which does produce a fatal effect ; in these, and like cases, the person so operating upon the mind or conduct of the person injured, shall be deemed guilty of homicide.

CHAPTER X.

OF JUSTIFIABLE HOMICIDE.

ARTICLE 547. Homicide is justifiable in the cases enumerated in the succeeding Articles of this Chapter.

§ I.

Of a Public Enemy.

ARTICLE 548. It is lawful to kill a public enemy not only in the prosecution of war, but when he may be in the act of hostile invasion, or occupation of any part of the State. A public enemy is any person acting under the authority or enlisted in the service of any government at war with this State, or the United States. Persons belonging to hostile tribes of Indians who habitually commit depredations upon the lives or property of the inhabitants of this State, and all persons acting with such tribes are public enemies, and this, whether found in the act of committing such depredations, or under circumstances which sufficiently show an intention so to do.

ART. 549. Homicide of a public enemy by poison, or the use of poisoned weapons, is not justifiable.

ART. 550. Homicide of a public enemy who is a deserter, or a prisoner of war, or the bearer of a flag of truce, is not justifiable.

§ II.

Of a Convict.

ARTICLE 551. The execution of a convict for a capital offence by a legally qualified officer, under the warrant of a Court of competent jurisdiction, is justifiable when the same takes place in the manner authorized by law and directed by the warrant.

§ III.

By Officers in the Performance of a Duty, and by other Persons under certain Circumstances.

ARTICLE 552. Homicide by an officer in the execution of the lawful orders of Magistrates and Courts, is justifiable when he is violently resisted, and has just ground to fear danger to his own life in executing the order.

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ART. 553. The officer is justifiable, though there may have been an error of judgment on the part of the Magistrate or Court, if the order emanated from a proper authority.

ART. 554. The rule set forth in the two preceding Articles is subject to the following restrictions :

1. The order must be that of a Magistrate or Court having lawful authority to issue it.
2. It must have such form as the law requires to give it validity.
3. The person executing the order must be some officer duly authorized by law to execute the order, or some person specially appointed in accordance with law for the performance of the duty.
4. If the person executing the order be an officer, and performing a duty which no other person can by law perform, he must have taken the oath of office and have given bond where such is required by law.
5. The order must be executed in the manner directed by law, and the person executing the same must make known his purpose and the capacity in which he acts.
6. If the order be a written one, and the person against whom it issues, before resistance offered, wishes to see the same, or hear it read, the person charged with its execution shall produce the order and show it or read it.
7. In making an arrest, under written order, the person acting under such order shall, in all cases, declare to the party against whom it is directed the offence of which he is accused, and state the nature of the warrant, unless prevented therefrom by the act of the party to be arrested.

8. The officer, or other person executing an order of arrest, is required to use such force as may be necessary to prevent an escape when it is attempted, but he shall not, in any case, kill one who attempts to escape, unless in making, or attempting such escape, the life of the officer is endangered, or he is threatened with great bodily injury.

9. In overcoming a resistance to the execution of an order, the officer, or person executing the same, may oppose such force as is necessary to overcome the resistance; but he shall not take the life of the person resisting, unless he has just ground to fear that his own life will be taken, or that he will suffer great bodily injury in the execution of the order.

10. A prisoner under sentence of death, or of imprisonment in the Penitentiary, or attempting to escape from the Penitentiary, may be killed by the officer having legal custody of him, if his escape can in no other manner be prevented.

ART. 555. The order referred to in this Chapter may be either written or verbal, where a verbal order is allowed for the arrest of a person.

ART. 556. Under written orders are included all process in a criminal or civil action, which directs the seizure of the person or of property.

ART. 557. No officer, or other person ordered verbally to arrest another, is justified in killing, except the arrest be in a case of felony, or for the prevention of a felony.

ART. 558. Persons called in aid of an officer, in the performance of a duty, are justified in the same manner as the officer himself.

ART. 559. All persons opposing the execution of the order, or aiding in an escape, may be treated in the same manner as the person against whom the order is directed, or who is attempting to escape.

ART. 560. Officers acting under the authority of the laws or Courts of the United States, have the rights and are liable to the rules prescribed in this Chapter.

ART. 561. Homicide is justifiable when necessary to suppress a riot, when the same is attempted to be suppressed in

the manner pointed out in the Code of Criminal Procedure and can in no way be suppressed except by taking life.

ART. 562. Homicide is justifiable when committed by the husband upon the person of any one taken in the act of adultery with the wife, provided the killing take place before the parties to the act of adultery have separated.

ART. 563. Homicide cannot be justified by reason of the existence of the circumstances spoken of in the preceding Article, where it appears that there has been, on the part of the husband, any connivance in, or assent to the adulterous connection.

§ IV.

HOMICIDE OF A SLAVE WHEN JUSTIFIABLE.

ARTICLE 564. Homicide committed upon a slave is justifiable in the following cases :

1. When a slave is in a state of insurrection.
2. When a slave forcibly resists any lawful order of his master, overseer, or other person having legal charge of him, in such manner as to give reasonable fear of loss of life, or great bodily harm, in enforcing obedience to such order.
3. Where a runaway slave forcibly resists a person attempting to arrest him, in such manner as to cause reasonable fear of loss of life, or of great bodily harm, in making such arrest.
4. Where a slave forcibly resists any lawful order of any patrol or officer of the law, in such manner as to cause reasonable fear of loss of life, or great bodily harm in executing such order.
5. When a slave uses weapons calculated to produce death, in any case other than those in which he may lawfully resist with arms, under the provisions of Part III, of this Code.

ART. 565. A slave is said to be in a state of insurrection when he is acting in concert with at least four others, and

they are armed with the intention of freeing one or more of their number from a state of slavery.

ART. 566. Flight on the part of a slave, except when in a state of insurrection, does not justify homicide by either the master or any other person ; and the killing of a slave under any other circumstances except those above enumerated, is the same offence as the killing of a free person.

§ V.

IN DEFENCE OF PERSON OR PROPERTY.

ARTICLE 567. Homicide is permitted in the necessary defence of person or property, under the circumstances, and subject to the rules herein set forth.

ART. 568. Homicide is permitted by law, and subject to no punishment, when inflicted for the purpose of preventing the offences of murder, rape, robbery, maiming, arson, burglary, and theft at night, whether the homicide be committed by the party about to be injured, or by some person in his behalf, when the killing takes place under the following circumstances :

1. It must reasonably appear by the acts, or by words, coupled with acts of the person killed, that it was the purpose and intent of such person to commit one of the offences above named.

2. The killing must take place while the person killed was in the act of committing the offence, or after some act done by him, showing evidently an intent to commit such offence.

3. It must take place before the offence committed by the party killed is actually completed, except that, in case of rape, the ravisher may be killed at any time before he has escaped from the presence of his victim, and except also in the cases hereafter enumerated.

4. Where the killing takes place to prevent the murder of some other person, it shall not be deemed that the murder is complete so long as the offender is still inflicting violence, though the mortal wound may have been given.

5. If homicide takes place in preventing a robbery, it shall be justifiable, if done while the robber is in presence of the person robbed, or is flying with the money or other article taken by him.

6. In case of maiming, the homicide may take place at any time while the offender is mistreating with violence the person injured, though he may have completed the offence of maiming.

7. In case of arson, the homicide may be inflicted while the offender is in or at the building or other property burnt, or flying from the place before the destruction of the same.

8. In cases of burglary and theft by night, the homicide is justifiable at any time while the offender is in the building, or at the place where the theft is committed, or is within reach of gun-shot from such place or building.

ART. 569. When the homicide takes place to prevent murder or maiming, if the weapons or means used by the party attempting or committing such murder or maiming are such as would have been calculated to produce that result, it is to be presumed that the person so using them designed to inflict the injury.

ART. 570. Homicide is justifiable, also, in the protection of the person or property against any other unlawful and violent attack beside those mentioned in the preceding Article, and in such cases all other means must be resorted to for the prevention of the injury, and the killing must take place while the person killed is in the very act of making such unlawful and violent attack, and any person interfering in such case, in behalf of the party about to be injured, is not justifiable in killing the aggressor, unless the life or person of the injured party is in peril by reason of such attack upon his property.

ART. 571. The party whose person or property is so unlawfully attacked, is not bound to retreat in order to avoid the necessity of killing his assailant.

ART. 572. The attack upon the person of an individual, in order to justify homicide, must be such as produces a reasonable expectation or fear of death, or some serious bodily injury.

ART. 573. When, under Article 570, a homicide is committed in the protection of property, it must be done under the following circumstances :

1. The possession must be of corporeal property and not of a mere right, and the possession must be actual and not merely constructive.
2. The possession must be legal, though the right of property may not be in the possessor.
3. If possession be once lost, it is not lawful to regain it by such means as result in homicide.
4. Every other effort in his power must have been made by the possessor, to repel the aggression, before he will be justified in killing.

ART. 574. Simple assault and battery, or mere trespass upon property, will not justify homicide, nor will any offence not accompanied by force, such as theft, except in the night time, and from some house or place, such as is defined in Articles 680 and 681.

CHAPTER XI.

OF EXCUSABLE HOMICIDE.

ARTICLE 575. Homicide is excusable when the death of a human being happens by accident or misfortune, though caused by the act of another, who is in the prosecution of a lawful object by lawful means.

ART. 576. The lawful act, causing the death of another, must be done by lawful means and used in a lawful degree. Though lawful for the parent, guardian, schoolmaster, or master, to chastise the child, ward, scholar, or slave, or apprentice, yet if this be done with an instrument likely to produce death, or if with a proper instrument the chastisement be cruelly inflicted, and death result, it is murder.

CHAPTER XII.

HOMICIDE BY NEGLIGENCE.

ARTICLE 577. Homicide by negligence is of two kinds:

1. Such as happens in the performance of a lawful act; and
 2. That which occurs in the performance of an unlawful act.
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§ I.

In the Performance of a Lawful Act.

ARTICLE 578. If any person, in the performance of a lawful act, shall, by negligence and carelessness, cause the death of another, he is guilty of negligent homicide of the first degree.

ART. 579. A lawful act is one not forbidden by the penal law, and which would give no just occasion for a civil action.

ART. 580. To constitute this offence, there must be an apparent danger of causing the death of the person killed, or of some other.

ART. 581. The want of proper care and caution distinguishes this offence from excusable homicide. The degree of care and caution is such as a man of ordinary prudence would use under like circumstances.

ART. 582. Throwing timbers by a workman from the roof or upper part of a house into a public street or highway, or where a number of persons are known to be around the house.*

Discharging fire arms in a public street or highway in such manner as would be likely to injure persons who might pass, are examples of negligent homicide of the first degree.

* See note at the end of the Code.

But, if by the corporate laws of any town or city, the firing of arms be forbidden, the act is unlawful, and the offence will be of a higher degree.

ART. 584. To bring the offence within the definition of homicide by negligence, either of the first or second degree, there must be no apparent intention to kill.

ART. 585. The homicide must be the consequence of the act done or attempted to be done.

ART. 586. Negligent homicide of the first degree shall be punished, by confinement in the County Jail, not exceeding one year, or by fine, not exceeding one thousand dollars.

§ II.

In the Performance of an Unlawful Act.

ARTICLE 587. The definitions, rules and provisions of the preceding Articles of this Chapter, with respect to negligent homicide of the first degree, apply also to the offence of negligent homicide in the second degree, or such as is committed in the prosecution of an unlawful act, except when contrary to the following provisions.

ART. 588. Negligent homicide of the second degree can only be committed when the person guilty thereof is in the act of committing, or in attempting the commission of an unlawful act.

ART. 589. Within the meaning of an unlawful act, as used in this Chapter, are included,

1. Such acts as by the penal law are called misdemeanors ; and

2. Such acts, not being penal offences, as would give just occasion for a civil action.

ART. 590. When one in the execution of, or in attempting to execute, an act made a felony by the penal law, shall kill

another, though without an apparent intention to kill, the offence does not come within the definition of negligent homicide.

ART. 591. When the unlawful act attempted, or executed, is one known as a misdemeanor, the punishment of negligent homicide committed in the execution of such unlawful act, shall be imprisonment in the County Jail not exceeding three years, or by fine not exceeding three thousand dollars.

ART. 592. If the act intended is one for which an action would lie, but not an offence against the *penal* law, the homicide resulting therefrom is a misdemeanor, and may be punished, by fine, not exceeding one thousand dollars, and by imprisonment in the County Jail, not exceeding one year.

*Repealed
VII. 189* **ART. 593.** If any person, in the attempt to commit a culpable homicide less than felony, shall kill some person against whom he had no design, the killing does not come within the definition of negligent homicide, and he shall be punished in the same manner as if he had killed the person whom he intended to kill.

CHAPTER XIII.

OF MANSLAUGHTER.

§ I.

Definition.

ARTICLE 594. Manslaughter is voluntary homicide committed under the immediate influence of sudden passion aris-

sing from an adequate cause, but neither justified or excused by law.

ART. 595. Manslaughter differs from all the grades of homicide heretofore defined and made culpable in this, that there is an intention to kill. *homicid* *11.189*

ART. 596. By the expression "under the immediate influence of sudden passion" is meant,

1. That the provocation must arise at the time of the commission of the offence, and that the passion is not the result of a former provocation.

2. The act must be directly caused by the passion arising out of the provocation. It is not enough that the mind is merely agitated by passion arising from some other provocation, or a provocation given by some person other than the party killed.

3. The passion intended is either of the emotions of the mind, known as anger, rage, sudden resentment, or terror, rendering it incapable of cool reflection.

ART. 597. By the expression "adequate cause" is meant, such as would commonly produce a degree of anger, rage, resentment or terror, in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

ART. 598. Insulting words or gestures, or an assault and battery, so slight as to show no intention to inflict pain or injury, or an injury to property, unaccompanied by violence, are not *adequate causes*.

ART. 599. The following are deemed adequate causes:

1. An assault and battery by the deceased, causing pain or bloodshed.

2. A serious personal conflict, in which great injury is inflicted by the person killed, by means of weapons, or other instruments of violence, or by means of great superiority of personal strength, although the person guilty of the homicide were the aggressor, provided such aggression was not made with intent to bring on a conflict, and for the purpose of killing.

3. Adultery of the person killed, with the wife of the per-

son guilty of the homicide, provided the killing occur as soon as the fact of an illicit connection is discovered.

4. Insulting words or conduct of the person killed, towards a female relation of the party guilty of the homicide.

enacted *III. 172* ART. 600. In order to reduce a voluntary homicide to the grade of manslaughter, it is necessary not only that adequate cause existed to produce the state of mind referred to in the third subdivision of Article 596, but also that such state of mind did actually exist at the time of the commission of the offence.

ART. 601. Though a homicide may take place under circumstances showing no deliberation, yet if the person guilty thereof provoked a contest with the apparent intention of killing, or doing serious bodily injury to the deceased, the offence does not come within the definition of manslaughter.

§ II.

Punishment.

amendd. *III. 173* ARTICLE 602. Manslaughter is of various degrees of culpability, according to the circumstances under which it was committed. It shall be punished, by imprisonment in the Penitentiary, not exceeding five years.

CHAPTER XIV.

OF DUELING.

ARTICLE 603. Any citizen of this State who shall fight a duel with deadly weapons, or send or accept a challenge to

fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall be deprived of holding any office of trust or profit under this State.

ART. 604. If any person not being a citizen of this State, shall, within this State, commit either of the offences named in the preceding Article, he shall be fined, in an amount not less than one thousand dollars, and be imprisoned, in the County Jail, not exceeding twelve months.

ART. 605. If, in any duel hereafter fought within this State, either of the combatants be killed, or receive a wound from which he afterwards dies within three months, the survivor shall be deemed guilty of manslaughter, and punished accordingly.

ART. 606. It is the duty of all Magistrates, when they have probable grounds to suspect that a duel is about to be fought, or that persons are going out of the State for that purpose, to issue a warrant of arrest, and have all persons concerned, either as principals or seconds, and all persons aiding or assisting in such duel, brought before them, and upon examination, according to the facts of the case, to require of such persons to enter into bond, with sufficient security, to keep the peace, and a bond so taken shall be recoverable upon suit brought, and the breach thereof proved in the same manner as provided for bonds taken under Article 81 of the Code of Criminal Procedure.

CHAPTER XV.

OF MURDER.

ARTICLE 607. Murder is voluntary homicide committed ~~and~~ with deliberate design, by whatever means perpetrated, when *W. 173*

the offence does not come within the definition of any of the homicides which are enumerated in the preceding Chapters of this Title.

ART. 608. Murder is distinguishable from every other species of homicide by the absence of the circumstances which reduce the offence to negligent homicide or manslaughter, or which excuse or justify the homicide.

amend. **ART. 609.** The jury, in every case of murder, will regulate the punishment according to a just estimate of the heinousness of the offence. They are authorized to consider,

- III. 134*
1. The means used to effect the killing, and the degree of cruelty displayed by the person guilty thereof.
 2. The purpose for which the homicide is committed.
 3. The condition of the person murdered.
 4. The relationship between the offender and the person killed.
 5. The time and place, and the circumstances attending the commission of the offence, and any and every circumstance tending to show the degree of moral turpitude attached to the offence, and the influence of its perpetration upon society, by reason of the peculiar characteristics attending the case.

ART. 610. If any person be killed with a *bowie knife* or *dagger*, under circumstances which would otherwise render the homicide a case of manslaughter, the killing shall nevertheless be deemed murder, and punished accordingly.

ART. 611. A "bowie knife" or "dagger," as the terms are here and elsewhere used, means any knife intended to be worn upon the person, which is capable of inflicting death, and not commonly known as a pocket knife.

amend. **ART. 612.** Where a defendant accused of murder, seeks to justify himself on the ground of threats against his own life, he may be permitted to introduce evidence of the threats made, but the same shall not be regarded as affording a justification for the offence, unless it be shown that at the time of the homicide, the person killed, by some act then done, manifested an intention to execute the threat so made.

§ II.

Punishment.

ARTICLE 612a*. Murder is punished according to the degree of atrocity, or the circumstances of extenuation in each particular case. It may be punished by, *against 11.1.194*

1. Death.
 2. Solitary confinement in the Penitentiary for life.
 3. Confinement in the Penitentiary to labor, for a term of years, not less than three nor more than fifteen.
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CHAPTER XVI.**GENERAL PROVISIONS AS TO OFFENCES AGAINST THE PERSON.**

ARTICLE 613. The instrument or means by which a homicide is committed, are to be taken into consideration, in judging of the intention of the party offending ; if the instrument be one not likely to produce death, it is not to be presumed that death was designed, unless from the manner in which it was used such intention evidently appears.

ART. 614. If an injury be inflicted in a cruel manner, though with an instrument not likely under ordinary circumstances to produce death, the killing will be manslaughter or murder, according to facts of the case.

ART. 615. Where a homicide occurs under the influence of sudden passion, but by the use of means not in their nature calculated to produce death, the person killing is not deemed guilty of the homicide, unless it appear that there was an

* See Note at the end of the Code.

intention to kill, but the party from whose act the death resulted, may be prosecuted for, and convicted of any grade of assault and battery.

*Repealed
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ART. 616. Where homicide results from an assault and battery committed under circumstances of deliberation, but by the use of means not ordinarily calculated to produce death, the presumption is that death was not intended; but the person offending, may be prosecuted for, and convicted of any grade of assault or battery.

ART. 617. Where the circumstances attending a homicide show an evil or cruel disposition, or that it was the design of the person offending to kill, he is deemed guilty of murder or manslaughter, according to the other facts of the case, though the instrument or means used may not in their nature be such as to produce death ordinarily.

TITLE XVIII.

OF OFFENCES AGAINST REPUTATION.

CHAPTER I.

OF LIBEL.

ARTICLE 618. He is guilty of libel, who, with intent to injure, makes, writes, prints, publishes, sells or circulates any malicious statement affecting the reputation of another, in respect to any matter or thing pointed out in this Chapter.

ART. 619. If any person be guilty of libel, he shall be punished, by fine, not less than one hundred dollars, nor more than two thousand dollars, or by imprisonment, in the County Jail, not exceeding two years; and the Court may enter up judgment and issue an order thereupon, directing the Sheriff to seize and destroy all the publications, prints, paintings, or engravings, constituting the libel as charged in the indictment or information.

ART. 620. If any person, with intent to injure the reputation of another, shall without lawful authority, make, publish or circulate, a writing, purporting to be the act of some other person, and which comes within the definition of libel, as given in this Chapter, he shall be punished in the same manner as if the act purported to be his own; and the rules with respect to libel apply also to the making and circulation of such false writing.

ART. 621. He is the maker of a libel, who originally contrived, and either executed it himself, by writing, printing, engraving, or painting, or dictated or caused it to be done by others.

ART. 622. He is the publisher of a libel, who either of his own will, or by the persuasion or dictation of another, executes the same in any of the modes pointed out as constituting a libel; but if any one by force or threats is compelled to execute such libel, he is guilty of no offence.

ART. 622a* He is guilty of circulating a libel, who, knowing its contents, either sells, distributes or gives, or who, with malicious design, reads or exhibits it to others.

ART. 623. The written, printed or published statement to come within the definition of libel, must convey the idea, either,

1. That the person to whom it refers has been guilty of some penal offence; or,
2. That he has been guilty of some act or omission, which though not a penal offence, is disgraceful to him as a member of society, and the natural consequence of which is to bring him into contempt among honorable persons; or,

* See note at the end of the Code.

3. That he has some moral, vice or physical or mental defect or disease, which renders him unfit for intercourse with respectable society, and such as should cause him to be generally avoided ; or,

4. That he is notoriously of bad or infamous character ; or,

5. That any person in office, or a candidate therefor, is dishonest, and therefore unworthy of such office, or that while in office he has been guilty of some malfeasance rendering him unworthy of the place.

ART. 624. A libel may be either written, printed, engraved, etched or painted, but no verbal defamation comes within the meaning thereof ; and whenever a defendant is accused of libel, by means of a painting, engraving or caricature, it must clearly appear therefrom that the person said to be defamed was, in fact, intended to be represented by such painting, engraving or caricature.

ART. 625. In order to render any manuscript a libel, it must be circulated, or posted up on some public place.

ART. 626. If the libel be in printed form, and issues or is sold in any office or shop, where a public newspaper is conducted, or where books or other printed works are sold or printed, the editor, publisher and proprietor of such newspaper, or any one of them, or the owner of such shop, is to be deemed guilty of making or circulating such libel, until the contrary is made on the trial to appear.

ART. 627. The editor, publisher or proprietor of a public newspaper, may avoid the responsibility of making or publishing a libel by giving the true author of the same, provided such author be a resident of this State, and a person of good character, except in cases where it is shown that such editor, publisher or proprietor caused the libel to be published with malicious design.

ART. 628. No person shall be convicted of libel merely on evidence that he has made a manuscript copy of a libel, or has performed the manual labor of printing it, unless it be shown positively that such person was actuated by a malicious design against the person defamed. But the person for

whose account, or by whose order it was printed, shall be presumed to have known the intent of the publication, and shall be liable for the offence.

ART. 629. It is sufficient to constitute the offence of libel, if the natural consequence of the publication of the same is to injure the person defamed, although no actual injury to his reputation has been sustained.

ART. 630. The intent to injure is to be presumed if such would be the natural consequence of the libel, though no actual proof be made that the defendant had such design; and, in all trials for libel, the jury are to judge from the facts proved relative to the malicious design of the defendant, as to what penalty ought to be imposed under the restrictions herein prescribed.

ART. 631. It is no offence to make true statements of fact, or express opinions as to the integrity or other qualifications of a candidate for any office or public place, or appointment.

ART. 632. It is no offence to publish true statements of fact as to the qualifications of any person for any occupation, profession or trade.

ART. 633. It is no offence to publish any criticism or examination of any work of literature, science or art, or any opinion as to the qualifications or merits of the author of such work.

ART. 634. To constitute libel, there must be some injury intended to the reputation of *persons*; and no publication as to the Government, or any of the branches thereof, as such, is an offence under the name of seditious writings, or any other name.

ART. 635. It is no libel to make publication respecting the merits or doctrines of any particular religion, system of morals, or politics, or of any particular form of government.

ART. 636. It is no libel to make any publication respecting a body politic or corporate as such.

ART. 637. It is no libel to publish any statement respect-

ing any legislative or judicial proceeding, whether the statement be in fact true or not, unless in such statement a charge of corruption is made against some person acting in a legislative or judicial capacity.

ART. 638. Where any person, by virtue of his office, is required to record the proceedings of any department of the government, or of any body corporate or politic, or of any association organized for purposes of business, or as a religious, moral, benevolent, literary, or scientific institution, he cannot be charged with libel for any entry upon the minutes or records of such department, body, or association, made in the course of his official duties.

ART. 639. If any false statement be entered upon the minutes or record of proceedings of any corporate body or association, included within the meaning of the preceding Article, which would be libel if written, printed, published or circulated by an individual, according to the previous Articles of this Chapter, the persons being members of such body or association, who assent to, and direct such libellous statement to be made, are guilty of libel, under the same rules as if the false statement had been written, published or circulated, in any other manner than as a part of the record or proceedings of such body or association ; subject, however, to the restrictions contained in the succeeding Article.

ART. 640. The libellous statement, referred to in the preceding Article, is not to be presumed to have been made with intent to injure, from the mere fact that such would be the natural result thereof, unless it appear from other facts that the statement was in fact made with that intention.

ART. 641. The word "malicious" is used to signify an act done with evil or mischievous design ; and it is not necessary to prove any special facts, showing ill feeling on the part of the person who is concerned in making, printing, publishing or circulating a libellous statement against the person injured thereby.

ART. 642. No statement made in the course of a Legislative or Judicial proceeding, whether true or false, although made with intent to injure, and from malicious purposes, comes within the definition of libel.

ART. 643. In the following cases, the truth of any statement charged as a libel, may be shown in justification of the defendant.

1. Where the publication purports to be an investigation of the official conduct of officers or men, in a public capacity.
2. Where it is stated in the libel that a person has been guilty of some penal offence, and the time, place and nature of the offence is specified in the publication.
3. Where it is stated in the libel that a person is of notoriously bad or infamous character.
4. Where the publication charges any person in office, or a candidate therefor, with a want of honesty, or of having been guilty of some malfeasance in office, rendering him unworthy of the place. In other cases the truth of the facts stated in the libel cannot be enquired into.

ART. 644. The jury in every case of libel are not only the judges of the facts and of the law, under the direction of the Court, in accordance with the constitution, but they are judges of the intent with which a libel may have been published or circulated, subject to the rules prescribed in this Chapter, and in rendering their verdict they are to be governed by a consideration of the nature of the charge contained in the libel, the general reputation of the person said to be defamed, and the degree of malice exhibited by the defendant in the commission of the offence.

ART. 645. This Title regulates the law with regard to libel, when prosecuted as a penal offence, and is not intended to have any operation upon the subject so far as relates to civil remedies for the recovery of damages.

CHAPTER II.

OF FALSE ACCUSATIONS AND THREATS OF PROSECUTION.

ARTICLE 646. If any two or more persons shall combine, falsely to accuse another of an offence, and shall, in pursuance of such combination, make such accusation before a Court or Magistrate, or in any newspaper or other public print, or by the circulation of hand bills, or in any other public manner, by writing, they shall be punished by fine, not exceeding two thousand dollars, or by imprisonment, in the County Jail, not exceeding two years.

ART. 647. If the purpose of such combination be to extort money or any pecuniary advantage, the punishment shall be fine, not to exceed two thousand dollars, and imprisonment, in the Penitentiary, not to exceed three years.

ART. 648. If any person, with intent to extort money, or any pecuniary advantage, shall threaten to accuse another of a felony, before any Court, or to publish any other statement respecting him which would come within the meaning of a libel, he shall be punished in the manner set forth in Article 646.

ART. 649. If any person shall, in any newspaper, or hand bill, or by notice posted up in any place, publish another as a coward, or use towards him other opprobrious language, he shall be fined in an amount not exceeding two hundred dollars ; and if such publication or posting be in consequence of a refusal to fight a duel, the punishment shall be fine, not exceeding five hundred dollars.

TITLE XIX.

OF OFFENCES AFFECTING SLAVES AND SLAVE PROPERTY.

CHAPTER I.

EXCITING INSURRECTION OR INSUBORDINATION.

ARTICLE 650. Any person who shall aid in any insurrection of slaves against the free inhabitants of this State, who shall join in any secret assembly of slaves, in which such insurrection shall be planned, with design to promote it, or shall excite or persuade any slaves to attempt such insurrection, shall be punished, by confinement, in the Penitentiary, not less than three years, nor more than fifteen years.

ART. 651. By "insurrection of slaves," is meant an assembly of five or more with arms, with intent to obtain their liberty by *force*.

ART. 652. The term excite, as here used, means to offer any persuasion or inducement which has insurrection for its immediate object. It is not to be so construed as to make those guilty who only use words calculated to make the slave discontented with his state.

ART. 653. Any person who shall, by words or writing, addressed to a slave, endeavor to render such slave discontented with his state of slavery, shall be punished, by fine, not less than one hundred dollars, nor more than one thousand dollars, or by imprisonment, in the County Jail, not exceeding three years.

CHAPTER II.

ILLEGAL TRANSPORTATION OF SLAVES.

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ARTICLE 654. The master of any steamboat or other vessel, who shall carry, or cause to be carried, out of any county, a slave, without the consent of the owner or employer, with intent to deprive the owner of his property in such slave, or who shall knowingly receive on board any runaway slave, and permit him to remain on board without proper effort to apprehend him, shall be confined in the Penitentiary, not less than two nor more than ten years.

CHAPTER III.

STEALING OR ENTICING A SLAVE.

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ARTICLE 655. Any person who shall steal or entice away any slave, the property of another, shall be confined in the Penitentiary, not less than five, nor more than fifteen years.

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III. 175
ART. 656. Any person who shall attempt to steal or entice away a slave, the property of another, shall be confined in the Penitentiary, not less than one, nor more than seven years.

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ART. 657. The offence of stealing a slave is complete within the meaning of Article 655, by taking the slave into possession, either by his consent or forcibly, and removing him a distance, however short, from the possession or premises of his employer or owner, with the design to claim the ownership of such slave, or otherwise dispose of him as the property of the person so offending.

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ART. 658. The offence of enticing away a slave consists in inducing a slave through persuasion, or by means of any reward, to leave the possession or premises of his owner or employer, and to accompany the person so offending for the

purpose of escaping from servitude to his owner, but the offence is not complete unless such slave shall have actually abandoned such possession or premises.

ART. 659. By the words "*attempt to steal*," as used in Article 656, is meant the use of any means, either forcible or persuasive, which may be directly calculated to enable the party offending to steal the slave.

ART. 660. An attempt to entice away a slave is the use of any means, forcible or persuasive, which may be calculated to induce such slave to leave the possession or premises of his master or employer, and accompany the offender, with an intention on the part of such slave to escape from his state of servitude.

CHAPTER IV.

OFFENCES RESPECTING RUNAWAY SLAVES.

ARTICLE 661. If any person advise a slave to leave the service of his master or employer, or aid such slave in so leaving, by procuring for or delivering to him a pass or other writing, or by furnishing him with money, clothes, provisions, or other facility, and such slave do actually abscond, he shall be confined, in the Penitentiary, for not less than one, nor more than seven years.

ART. 662. The offence mentioned in the preceding Article differs from that of enticing, or attempting to entice away a slave, in this, that the offence of aiding or advising a slave to leave the service of his master or employer, is complete when the slave shall have left his owner or employer, but not in the company of the person so aiding or advising.

CHAPTER V.

IMPORTING SLAVES GUILTY OF CRIME.

ARTICLE 663. If any person shall knowingly import, or bring into this State, a slave who shall be a fugitive from justice, or who shall have been sold or convicted of crime beyond the limits of this State, he shall be fined not less than one hundred dollars, nor more than one thousand dollars.

CHAPTER VI.

HARBORING AND CONCEALING.

ARTICLE 664. If any person shall harbor any runaway slave, he shall be fined, not less than one hundred dollars, nor more than five hundred dollars.

ART. 665. If any person shall conceal, or aid in concealing, any runaway slave, he shall be punished as prescribed in the preceding Article.

ART. 666. Any person convicted of a second offence under either of the two preceding Articles, shall be punished by confinement, in the Penitentiary, not exceeding three years.

ART. 667. By the term *harboring*, is meant the act of maintaining and concealing a runaway slave; the person so harboring having knowledge of the fact that he is a runaway.

CHAPTER VII.

TRADING WITH SLAVES.

ARTICLE 668. If any person shall sell to a slave, without the written consent of his master, mistress, overseer or employer, any intoxicating liquors, he shall be fined, not less than twenty, nor more than one hundred dollars.

ART. 669. If any person shall buy from a slave any valuable produce or article whatever, without the written consent of the master, mistress, overseer or employer of such slave, he shall be fined, not less than twenty, nor more than one hundred dollars.

CHAPTER VIII.

CRUEL TREATMENT OF SLAVES.

ARTICLE 670. If any person shall unreasonably abuse or cruelly treat a slave, whether his own property or the property of another, he shall be fined, not less than two hundred and fifty dollars, nor more than two thousand dollars.

ART. 671. It is unreasonable abuse of a slave to inflict a chastisement by whipping, or otherwise greatly disproportioned to the nature of the offence which provoked such chastisement, or to beat with unusual implements any such slave.

ART. 672. It is cruel treatment of a slave to inflict an unusual degree of punishment without just provocation, or to torture, or cause unusual pain and suffering to a slave by the use of any means, or to subject such slave to punishment so severe as to become injurious to his health, or calculated greatly to depreciate his value.

AET. 673. When, by abuse or cruel treatment, a slave is maimed or disfigured, the offence comes within the definition of maiming or disfiguring ; but a person indicted for either of the last named offences may be convicted on the trial thereof of the offence of unreasonably abusing or cruelly treating a slave.

AET. 674. If, by reason of abuse or cruel treatment to a slave, death shall result, the offence is murder.

AET. 675. If any person, not authorized by law, and without sufficient provocation, shall whip or strike any slave not his own property, he shall be punished, by fine, not exceeding one hundred dollars.

AET. 676. Patrols and Police Officers, who, under the police regulations of any county, city or town, inflict the punishment of whipping upon a slave, come within the meaning of persons "authorized by law," as set forth in the preceding Article ; but if the chastisement be unreasonably or cruelly inflicted, such persons are guilty of an offence under the previous Articles of this Chapter.

AET. 677. Any person who has the control or management of slaves, as heir, employer, executor, administrator or guardian, or in any other lawful capacity, is not within the meaning of Article 675.

AET. 678. Insulting language or gestures from a slave to a free white person will justify reasonable chastisement, whether such person has lawful control over the slave or not.

TITLE XX.

OF OFFENCES AGAINST PROPERTY OTHER THAN SLAVES..

CHAPTER I.

OF ARSON.

ARTICLE 679. Arson is the wilful burning of any house included within the meaning of the succeeding Articles of this Chapter.

ART. 680. A house is any building, edifice, or structure, enclosed with walls and covered, whatever may be the materials used for building.

ART. 681. A dwelling house is any house within which some person habitually sleeps or eats his meals, though it may be used for other purposes, as a store house, office, mill house, or the like; a tent or open shed does not come within the meaning of a dwelling house.

ART. 682. An outhouse is any house adjacent to, communicating with, or on the same premises with a dwelling house.

ART. 683. A public building is any court house, county clerk's, sheriff's, assessor and collector's office, meeting house, church, college, academy, school house, town house, jail, or any other building used for purposes of religious worship, political meetings, amusement, or as a place of confinement for prisoners.

ART. 684. The burning is complete when the fire has actually communicated to a house, though it may neither be destroyed nor seriously injured.

ART. 685. It is of no consequence by what means the fire is communicated to a house, if the burning is with design. It may be by setting fire to any combustible material communicating therewith, by an explosion, or by any other means.

ART. 686. When fire is communicated to a house by means of the burning of another house, or of some combustible matter, it shall be presumed that the intent was to destroy every house actually burnt, provided there was any apparent danger of such destruction.

ART. 687. The explosion of a house by means of gunpowder, or other explosive matter, comes within the meaning of arson.

ART. 688. A house blown up, or otherwise destroyed, for the purpose of saving another house from fire, is not within the meaning of arson.

ART. 689. The owner of a house may destroy it by fire or explosion, without incurring the penalty of arson, except in the cases mentioned in the succeeding Article.

ART. 690. When a house is within a town or city; or when it is insured; or when there is within it any property belonging to another; or when there is apparent danger by reason of the burning thereof, that the life or person of some individual, or the safety of some house belonging to another will be endangered; the owner, if he burn the same, is guilty of arson, and shall be punished according to the description of the house so burnt.

ART. 691. One of the part owners of a house is not permitted to burn it.

ART. 692. If any person shall wilfully burn a dwelling house or outhouse, he shall be punished, by confinement in the Penitentiary, not less than five, nor more than fifteen years.

ART. 693. If any person shall wilfully burn any storehouse, warehouse, gin house, mill house, when such house does not also come within the definition of a dwelling house, or

any public building, as defined in Article 683, he shall be punished, by confinement in the Penitentiary, not less than four, nor more than ten years.

ART. 694. If any person shall wilfully burn the Capitol building of the State, the Treasury building, or Comptroller's office of the State, the Executive mansion of the State, the building in which the Executive or Secretary of State shall keep their offices, or the General Land Office of the State, he shall be punished, by confinement in the Penitentiary for life.

ART. 695. If any person shall wilfully burn a building other than a dwelling house, he shall be punished, by confinement in the Penitentiary, not less than three, nor more than seven years.

ART. 696. By the term "building or other than a dwelling house," is meant any building coming within the definition of a house, and not included within the meaning of some other Article of this Chapter.

CHAPTER II.

OF OTHER WILFUL BURNING.

ARTICLE 697. The rules and definitions contained in the preceding Chapter, with respect to arson, apply also to wilful burnings under the provisions of this Chapter, where they are not clearly inapplicable.

ART. 698. If any person shall wilfully burn any building not coming within the description of a house as defined in the preceding Chapter ; or shall wilfully burn any stack of corn, hay, fodder, grain or flax, or any pile of boards, lumber or wood, the property of another, he shall be punished, by confinement in the Penitentiary, not exceeding three years, or by fine, not exceeding two thousand dollars.

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anns. ART. 699. If any person shall wilfully burn any ship or other vessel, or any boat, flat boat or raft, which, with its cargo, is of the value of one hundred dollars or more, he shall be punished, by confinement in the Penitentiary, not less than two, nor more than seven years, or by fine, not exceeding two thousand dollars.

anns. ART. 700. This offence is complete only when some person other than the person offending has an interest in the property by insurance, or otherwise, at the time the burning takes place.

anns. *W. 177* ART. 701. If any person shall wilfully burn any bridge, which by law or usage is a public highway, he shall be punished, by imprisonment, in the Penitentiary, not exceeding seven years, or by fine, not exceeding five thousand dollars.

ART. 702. If any person shall wilfully burn, or cause to be burned, any woodland or prairie not his own, at any time between the 1st of July and the 15th of February succeeding, he shall be fined, not less than fifty dollars, nor more than three hundred dollars.

ART. 703. The offence named in the foregoing Article is complete where the person offending sets fire to his own woodland or prairie, and the fire communicates to the woodland or prairie of another.

anns. *W. 177* ART. 704. If any person, with intent to defraud, shall wilfully burn any personal property owned by himself, which shall be at the time insured against loss or danger from fire, he shall be punished, by confinement, in the Penitentiary, not exceeding five years.

ART. 705. If any person shall wilfully burn any personal property belonging to another, he shall be fined, not exceeding five times the value of the property destroyed.

ART. 706. If any bodily injury, less than death, is suffered by any person, by reason of the commission of any of the offences named in this and the preceding Chapter, the punishment may be increased by the jury, so as not to exceed double that which is prescribed in cases where no such injury is suffered.

ART. 707. Where death is occasioned by any of the offences described in this and the preceding Chapter, the offender is guilty of murder.

CHAPTER III.

OF ATTEMPTS TO COMMIT ARSON OR OTHER WILFUL BURNING.

ARTICLE 708. If any person shall, by any means calculated to effect the object, attempt to commit any of the offences enumerated in the two preceding Chapters, he shall receive such punishment as may be assessed by the jury, not to exceed one-half of the penalty which would have been affixed in case the offence attempted had been actually committed.

amend.
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CHAPTER IV.

MALICIOUS MISCHIEF.

ARTICLE 709. If any person shall wilfully cast away, sink, or destroy in any way, other than by fire, any vessel, or boat, which, together with its cargo, if any, shall be of the value of one hundred dollars or more, he shall be punished, by imprisonment, in the County Jail, not exceeding two years, or by fine, not exceeding two thousand dollars. If the life of any person is lost by such act the offender is guilty of murder.

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ART. 710. If any person shall intentionally break, cut, pull, or tear down, misplace, or in any other manner injure any telegraph wire, post, machinery, or other necessary appur-

tenance to any telegraph line, or in any way wilfully obstruct or interfere with the transmission of messages along such telegraph line, he shall be punished, by confinement, in the Penitentiary, for a term not exceeding five years, or by fine, not less than one hundred, nor more than two thousand dollars.

ART. 711. If any person shall wilfully place any obstruction upon the track of any railroad, or remove any rail therefrom, or in any other way injure such road, or shall do any damage to any railroad, or car, whereby the life of any person might be endangered, he shall be punished, by imprisonment, in the Penitentiary, not less than two, nor more than seven years. If the life of any person is lost by any such unlawful act the offender is guilty of murder.

ART. 712. If any person shall fell, cut, alter, or remove, or cause to be cut, felled, altered, or removed, any boundary tree, or any land mark established upon the line or corner of, or as a bearing tree to, any tract or lot of land, without the consent of the owner, and with fraudulent intent, he shall be punished, by imprisonment, in the County Jail, not exceeding three years, or by fine, not exceeding one thousand dollars.

amend. **ART. 713.** If any person shall wilfully kill, maim, wound, poison, or disfigure any horse, gelding, mare, jack, jenney, colt, cattle, sheep, goat, swine, or dog, of another, with intent to injure the owner thereof, he shall be fined, not less than three times the amount of the injury done to the owner by such offence—and not exceeding ten times the amount of such injury.

ART. 714. If any person shall wilfully and wantonly kill, maim, wound, poison, or cruelly and unmercifully beat and abuse any dumb animal, such as is enumerated in the preceding Article, he shall be fined, not exceeding two hundred and fifty dollars.

amend. **ART. 715.** If any person shall wilfully and mischievously remove any buoy, beacon light, or any other mark or signal erected for the purpose of indicating the channel, in any bay, river, lake, or other navigable water within the State, or shall erect any false buoy, beacon light, or mark, or signal, to indicate the channel in any such bay, river, lake, or other navigable water, with intent to mislead or deceive, he shall

be punished, by confinement, in the Penitentiary, not exceeding five years, or by fine, not exceeding two thousand dollars, and if death occurs by reason of such unlawful conduct the offender is guilty of murder.

ART. 716. If any person shall wilfully and mischievously injure, or destroy, any growing fruit, corn, grain, or other agricultural product, or property, real or personal, of any description whatever, in such manner as that the injury does not come within the description of any of the offences against property otherwise provided for by this Code, he shall be punished, by fine, not exceeding five times the value of the property so destroyed, or five times the amount of the injury done.

CHAPTER V.

OF CUTTING AND DESTROYING TIMBER.

ARTICLE 717. If any person, without the consent of the owner, shall knowingly cut down, or destroy, any tree or timber upon any land not his own; or shall knowingly, and without such consent, carry away any such timber, he shall be punished, by fine, not exceeding three times the value of the timber so unlawfully cut down, destroyed, or carried away.

ART. 718. If the offence spoken of in the preceding Article be prosecuted in the District Court, it shall not be necessary for the indictment, or information, to state the name of the owner of such timber, but it shall be sufficient to charge that the timber was not the property of the person so offending.

ART. 719. Each day's cutting, destruction, or carrying away of timber, in violation of the provisions of this Act, shall be regarded as a separate offence.

ART. 720. An offence, under the provisions of this Chapter, may be prosecuted before a Justice of the Peace when three times the amount of the damage done by the unlawful act does not exceed one hundred dollars.

ART. 721. The District Court shall have exclusive jurisdiction of the offence defined in this Chapter when the fine exceeds one hundred dollars, and shall have concurrent jurisdiction with the Justices' Courts where the fine does not exceed that amount.

ART. 722. Nothing in this Chapter contained shall render any person guilty of an offence who cuts or uses timber for the purpose of making or repairing any public road, or bridge, passing over, or immediately adjacent to the land on which such tree or timber may be found, or who uses a reasonable amount of wood standing outside of an enclosure, for the purpose of making fires while traveling upon the road.

ART. 723. Nothing contained in this Chapter shall exempt a person from the penalty affixed to the offence of theft, whenever timber is taken in such manner as to come within the definition of that offence.

CHAPTER VI.

OF BURGLARY.

ARTICLE 724. The offence of burglary is constituted by entering a house by force, threats, or fraud, at night, or in like manner, by entering a house during the day and remaining concealed therein until night, with the intent in either case of committing a felony.

ART. 725. He is also guilty of burglary who, with intent to commit a felony by breaking, enters a house in the daytime.

ART. 725a*. The entry into a house, within the meaning of Article 724, includes every kind of entry, but one made by the free consent of the occupant, or of one authorized to give such consent ; it is not necessary that there should be any actual breaking to constitute the offence of burglary, except when the entry is made in the day time.

ART. 726. The entry is not confined to the entrance of the whole body ; it may consist of the entry of any part for the purpose of committing a felony ; or it may be constituted by the discharge of fire arms or other deadly missile, into the house, with intent to injure any person therein ; or it may be constituted by the introduction of any instrument for the purpose of taking from the house any personal property, although no part of the body of the offender should be introduced.

ART. 727. By the term breaking, as used in Article 725, is meant : that the entry must be made with actual force. The slightest force, however, is sufficient to constitute breaking ; it may be by lifting the latch of a door that is shut, by raising a window, the entry at a chimney, or other unusual place, the introduction of the hand or any instrument to draw out the property through an aperture made by the offender for that purpose.

ART. 728. A "house" within the meaning of this Chapter, is any building or structure erected for public or private use, whether the property of the United States, of this State, or of any public or private corporation or association, or of any individual, and of whatever material it may be constructed.

ART. 729. A "dwelling house" within the meaning of this Chapter, is any house where any person habitually sleeps.

ART. 730. Where the house entered is a dwelling house, the punishment of burglary shall be imprisonment, in the Penitentiary, not less than three, nor more than ten years ; where the house entered is not a dwelling house, the punishment shall be confinement, in the Penitentiary, not less than one year, nor more than five years.

ART. 731. If the entry into a house be effected by force, the punishment for the offence shall be increased to not more

* See note at the end of the Code.

than double the punishment which would otherwise be affixed to the offence. Force, within the meaning of this Article, is any violence whatever, opposed to any person or to any part of the house, for the purpose of effecting an entrance.

amend.
VIII. 180

ART. 732. If the burglary consist of the discharge of arms as specified in Article 726, the punishment shall be, confinement, in the Penitentiary, not less than one year, nor more than seven years, or by fine, not exceeding two thousand dollars.

ART. 733. If any person shall, after entering a house in any of the modes spoken of in this Chapter, commit the offence of theft, he shall be punished, by confinement, in the Penitentiary, not less than two years, nor more than seven years.

amend.
VIII. 180

ART. 734. If a house be entered for the purpose of committing any offence other than that of theft, and such offence be actually committed, the offender shall be punishable for the burglary and also for the offence committed.

ART. 735. If the burglary was effected for the purpose of committing one felony, and the person guilty thereof, shall, while in the house, commit another felony, he shall be punishable for any felony so committed as well as for the burglary.

ART. 736. An entry into a house for the purpose of committing theft, unless the same is effected by actual breaking, is not burglary when the same is done by a domestic servant or other inhabitant of such house; and a theft committed by such person after entering a house is only punishable as simple theft.

ART. 737. By the terms "day time" is meant, any time of the twenty-four hours, from thirty minutes before sun-rise, until thirty minutes after sun-set.

CHAPTER VII.

OF OFFENCES ON BOARD OF VESSELS AND STEAMBOATS.

ARTICLE 738. If any person, by any of the means enumerated in Article 724, shall, at night, enter a ship, or other sail vessel, or a steamboat, with intent to commit a felony, he shall be punished, by confinement in the Penitentiary, not less than one, nor more than five years.

ART. 739. If any person shall, in the day time, by breaking, enter a vessel or steamboat, with intent to commit a felony, he shall be punished as prescribed in the preceding Article.

ART. 740. If theft be committed on board a vessel or steamboat, by any person who has entered in the manner and for the purposes specified in the two preceding Articles, he shall be punished, by confinement in the Penitentiary, not less than two, nor more than seven years.

ART. 741. The definitions, rules and explanations of terms given in the preceding Chapter, are applicable to such terms in this Chapter; and the rules prescribed in Articles 724, 725, 726 and 727, of the preceding Chapter, shall also apply to similar cases on board of a vessel or steamboat.

ART. 742. A theft on board a steamboat committed by a servant or employee thereof, except in cases where there has been an actual breaking in, is punishable as simple theft.

CHAPTER VIII.

OF ROBBERY.

ARTICLE 743. If any person, by assault or by violence, and putting in fear of life or of bodily injury, shall fraudulently

take from the person of another any property, with intent to appropriate the same to his own use, he shall be punished, by confinement in the Penitentiary, for a term not less than two, nor more than ten years.

ART. 744. If any person, by threatening to do some illegal act injurious to the character, person or property of another, shall fraudulently induce the person so threatened to deliver to him any property, with intent to appropriate the same to his own use, he shall be punished, by confinement in the Penitentiary, not less than one, nor more than five years.

CHAPTER IX.

OF THEFT.

§ I.

Of Theft in General.

ARTICLE 745. Theft is the fraudulent taking of corporeal personal property, belonging to another, from his possession, or from the possession of some person holding the same for him without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking.

ART. 746. The property must be such as has some specific value, capable of being ascertained. It embraces every species of personal property capable of being taken.

ART. 747. To constitute "taking" it is not necessary that the property be removed any distance from the place of

taking, it is sufficient that it has been in the possession of the thief, though it may not be removed out of the presence of the person deprived of it; nor is it necessary that any definite length of time shall elapse between the taking and the discovery thereof; if but a moment elapse, the offence is complete.

ART. 748. The taking must be wrongful, so that if the property came into the possession of the person accused of theft by lawful means, the subsequent appropriation of it is not theft; but if the taking, though originally lawful, was obtained by any false pretext, or with an intent to deprive the owner of the value thereof, and appropriate the property to the use and benefit of the person taking, and the same is so appropriated, the offence of theft is complete.

ART. 749. It is not necessary, in order to constitute theft, that the possession and ownership of the property be in the same person at the time of taking.

ART. 750. Possession of the person so unlawfully deprived of property, is constituted by the exercise of actual control, care, or management of the property, whether the same be lawful or not.

ART. 751. No person can be guilty of theft by taking property belonging to himself, except in the following cases:

1. Where the property has been deposited with the person in possession, as a pledge or security for a debt.
2. Where it is in the possession of an officer of the law by process from a court of competent jurisdiction.
3. Where the property is in the possession of an executor or administrator, for the purpose of administration.
4. In all other cases where the person so deprived of possession, is, at the time of taking, lawfully entitled to the possession thereof as against the true owner.

ART. 752. If the person accused of theft be part owner of the property, the taking does not come within the definition of theft, unless the person from whom it is taken be wholly entitled to the possession at the time.

ART. 753. The term property, as used in relation to the

crime of theft, includes money, bank bills, goods of every description, commonly sold as merchandize, every kind of agricultural produce, clothing, any writing containing evidence of an existing debt, contract, liability, promise or ownership of property, real or personal, any receipt for money, discharge, release, acquittance, any printed book or manuscript, and in general, any and every article commonly known as, and called personal property, and all writings of every description, provided such property possess any ascertainable value.

marked. ART. 754. Theft of certain particular kinds of property, as of a slave, horse, property wrecked, &c., have a punishment affixed, differing from the general punishment of the crime of theft; whenever, therefore, the law provides a particular punishment for theft, committed in regard to a special kind of property, theft of such property is not included within the law affixing a general penalty to the offence; but in other cases, whenever it is declared to be an offence to steal or otherwise fraudulently appropriate property, the provision is intended to include any and every species of *personal property*, according to its general and broadest signification.

marked. ART. 755. Within the meaning of personal property, which may be the subject of theft, are included all animals of domestic breed, when they are proved to be of any specific value.

marked. ART. 756. Theft of property, of the value of twenty dollars or over, shall be punished, by confinement in the Penitentiary, for a term not less than one year, nor more than five years.

marked. ART. 757. Theft of property, under the value of twenty dollars, shall be punished, by confinement in the Penitentiary, for a term not exceeding two years, or by fine, not exceeding one thousand dollars.

ART. 758. The two preceding Articles do not apply to theft of property from a house or from the person, nor to cases of theft of any particular kind of property, where the punishment is specially prescribed.

marked. ART. 759. If property of the value of twenty dollars or

more, taken under such circumstances as to constitute theft, be voluntarily returned within a reasonable time, and before any prosecution commenced therefor, the punishment shall be only one half that which is affixed to the offence, and when the value is less than twenty dollars, no punishment shall be inflicted, and this Article shall apply to all cases of theft.

ART. 760. The words "steal" or "stolen," when used in this Code in reference to the acquisition of property, include property acquired by theft.

ART. 761. The stealing or feloniously taking of any growing, standing, or ungathered Indian corn, wheat, cotton, potatoes or rice, shall, hereafter, be deemed theft; and any person who shall, hereafter, steal or feloniously take, pluck, sever, or carry away, any Indian corn, or wheat, cotton, potatoes or rice, growing, standing or remaining ungathered in any plantation, field or other ground, shall, on conviction thereof, be deemed guilty of theft, and suffer punishment as in other cases of theft.

§ II.

Of Theft from the Person.

ARTICLE 762. If any person shall commit theft by privately stealing from the person of another, he shall be punished, by confinement in the Penitentiary, not less than two, nor more than seven years.

ART. 763. To constitute this offence, it is necessary that the following circumstances concur:

1. The theft must be from the person; it is not sufficient that the property be merely in the presence of the person from whom it is taken.
2. The theft must be committed without the knowledge of the person from whom the property is taken, or so suddenly as not to allow time to make resistance before the property is carried away.

3. It is only necessary that the property stolen should have gone into the possession of the thief, it need not be carried away in order to complete the offence.

§ III.

Of Theft from a House.

ARTICLE 764. If any person shall steal property from a house, in such manner as that the offence does not come within the definition of burglary, he shall be punished, by confinement in the Penitentiary, not less than two, nor more than seven years.

§ IV.

Theft of Animals.

amend. ARTICLE 765. If any person shall steal any horse, gelding, mare, colt, ass, or mule, he shall be punished, by confinement in the Penitentiary, not less than two, nor more than seven years.
amend. *W. 18/* ART. 766. If any person shall steal any neat cattle, sheep, goat or hog, he shall be punished, by confinement in the Penitentiary, not less than one, nor more than five years.

§ V.

Illegal Marking and Branding, &c.

ARTICLE 767. Every person who shall mark, or brand, any horse, gelding, mare or colt, mule, ass, or neat cattle, or

who shall mark any sheep, goat or hog, not being his own, and without the consent of the owner, and with intent to defraud, shall be punished, by fine, not exceeding one hundred dollars.

ART. 768. Every person who shall alter or deface the mark or brand of any horse, gelding, mare or colt, mule, ass, or neat cattle, or shall alter or deface the mark of any sheep, goat or hog, not being his own property, and without the consent of the owner, and with intent to defraud, shall be punished, by fine, not exceeding one hundred dollars.

ART. 769. If any person shall remove the hide, or any part thereof, from any neat cattle not his own, and without the consent of the owner of said cattle, he shall be deemed guilty of a misdemeanor, and on conviction thereof, before any Court of competent jurisdiction, shall be fined not less than twenty, nor more than fifty dollars.

§ VI.

OF WRECKS.

ARTICLE 770. If any person, with intent to deprive the true owner of the value thereof, shall appropriate to his own use, or dispose of to his own benefit, any property taken or driven on shore, from any vessel wrecked, stranded, or burnt, on the sea shore, or on any river, bay or harbor of the State, he shall be punished, by confinement in the Penitentiary, not less than two, nor more than five years.

CHAPTER X.

EMBEZZLEMENT OF PROPERTY BY PRIVATE PERSONS.

ARTICLE 771. If any officer, agent, or clerk, of any incorporated company or institution ; or, of any city, town, or county, or if any clerk, or agent, of any private person, or copartnership, of any consignee or bailee of money or property, shall embezzle or fraudulently misapply, or convert to his own use, without the consent of his principal or employer, any money or property of another, which shall have come to his possession, or shall be under his care by virtue of said office, agency, or employment, he shall be deemed guilty of theft, and punished according to Articles 756 and 757.

ART. 772. If any carrier, to whom any money, goods, or other property shall have been delivered, to be carried by him ; or if any other person, who shall be entrusted with such property, shall embezzle, or fraudulently convert to his own use, any such money, goods or property, either in the mass, as the same were delivered or otherwise, he shall be deemed guilty of theft, and shall be punished according to Articles 756 and 757.

CHAPTER XI.

FRAUDULENT DISPOSITION OF MORTGAGED PROPERTY.

ARTICLE 773. If any person hath given, or shall hereafter give any mortgage, deed of trust, or other lien in writing, upon any personal, or moveable property, and shall remove the same, or any part thereof, from this State, with intent to defraud, he shall be punished, by imprisonment in the Penitentiary, not less than two, nor more than five years.

CHAPTER XII.

OFFENCES AGAINST PROPERTY COMMITTED IN ANOTHER STATE
OR TERRITORY.

ARTICLE 774. If any person, who shall have committed an offence, in any foreign Country, State or Territory, which if committed in this State would have been robbery, theft, or receiving of stolen goods or property knowing the same to have been stolen, shall bring said property into this State, he shall be deemed guilty of robbery, theft, or receiving of stolen goods, knowing the same to have been stolen as the case may be, and shall be punished as if the offence had been committed in this State.

ART. 775. To render a person guilty, under the preceding Article, it must appear that by the law of the State, or Territory, from which the property was taken, and brought to this State, the act committed would also have been robbery, theft, or receiving of stolen goods.

Estays VII. 164

TITLE XXI.

OF MISCELLANEOUS OFFENCES.

CHAPTER I.

OF CONSPIRACIES.

ARTICLE 776. A conspiracy is an agreement entered into between two or more persons, to commit any one of the offences hereafter named in this Chapter.

ART. 777. The offence of conspiracy is complete, although the parties do not proceed to effect the object for which they have so unlawfully combined.

ART. 778. Before any conviction can be had for the offence of conspiracy, it must appear that there was a positive agreement to commit an offence. It will not be sufficient that such an agreement was contemplated by the parties charged.

ART. 779. A threat made by two or more, acting in concert, will not be sufficient to constitute conspiracy.

ART. 780. The agreement to come within the definition of conspiracy, must be to commit one or more of the following offences : Murder, Robbery, Arson, Burglary, Rape or Theft.

amend. **ART. 781.** Conspiracy to commit murder, shall be punished by confinement, in the Penitentiary, not less than two, nor more than ten years. Conspiracy to commit any of the other offences named in the preceding Article, shall be punished by one-half the punishment affixed by law to the commission of the offence so intended by the parties.

amend. **ART. 782.** A conspiracy to kill a human being shall be deemed a conspiracy to commit murder.

ART. 783. A conspiracy entered into in this State, for the purpose of committing an offence in any other of the States or Territories, of the Union, or in any foreign Territory, shall be punished in the same manner as if the object was to commit the offence in this State.

CHAPTER II.

OF THREATS TO COMMIT OFFENCES.

amend. **ARTICLE 784.** If any person shall threaten to take the life of a human being, or to inflict upon him any serious bod-

ily injury, he shall be punished, by imprisonment in the Penitentiary, not exceeding three years, or by fine, not exceeding two thousand dollars.

ART. 785. In order to render a person guilty of the offence provided for in this Chapter, it is necessary that the threat be seriously made.

~~ART. 786.~~ It is for the Jury to determine in every case of prosecution under this Chapter, whether the threat was seriously made, or was merely idle.

ART. 787. A threat that a person will do any act merely to protect himself, or to prevent the commission of some unlawful act by another, does not come within the meaning of this Chapter.

CHAPTER III.

SEDUCTION.

ARTICLE 788. If any person, by promise to marry, shall seduce an unmarried female, under the age of twenty-five years, and shall have carnal knowledge of such female, he shall be punished, by imprisonment in the Penitentiary, not exceeding five years, or by fine, not exceeding five thousand dollars.

answ.
7/7. 185

ART. 789. The term seduction is used in the sense in which it is commonly understood.

ART. 790. If the parties marry each other at any time before the conviction of the defendant, or if the defendant, in good faith, offer to marry the female so seduced, no prosecution shall take place, or, if begun, it shall be dismissed ; but the benefits of this Article shall not apply to the case of a

defendant who was in fact married at the time of committing the offence.

ART. 791. No person who was, at the time of committing the offence, married, and the fact of marriage known to the woman, shall be held liable for the offence defined in this Chapter.

*Saving Marriage in case unlawfully.
III. 185*

TITLE XXII.

REPETITION OF OFFENCES.

ARTICLE 792. If it be shown on the trial of misdemeanor that the defendant has been once before convicted of the same offence, he shall, on a second conviction, receive double the punishment prescribed for such offence in ordinary cases, and upon a third, or any subsequent conviction for the same offence, the punishment shall be increased, so as not to exceed four times the penalty in ordinary cases. If it be shown on the trial of a felony, less than capital, that the defendant has been before convicted of the same offence, or of one of the same nature, the punishment, on such second or other subsequent conviction shall be the highest which is affixed to the commission of such offence in ordinary cases.

ART. 793. Any person who shall have been three times convicted of a felony, less than capital, shall, on such third conviction, be imprisoned to hard labor for life, in the Penitentiary.

ART. 794. A person convicted a second time of any offence to which the penalty of death is affixed as an alternative punishment, shall not receive, on such second conviction, a less punishment than imprisonment for life in the Penitentiary.

PART III.

OF OFFENCES COMMITTED BY SLAVES AND FREE PERSONS OF COLOR.

TITLE I.

GENERAL PROVISIONS.

ARTICLE 795. The definition of offences as contained in the first and second Parts of this Code, are applicable to all such offences therein enumerated, as may be committed by slaves or free persons of color, except when otherwise provided in this Part of the Penal Code.

ART. 796. An offence committed by a slave is known as a *felony* when the punishment therefor is death or branding. An offence committed by a free person of color, is known as a felony when the punishment for the same is death, branding, or imprisonment in the Penitentiary; all other offences committed by either of these classes of persons, are called petty offences. *77. 186*

ART. 797. The District Court alone has jurisdiction to try felonies committed by either slaves or free persons of color; the jurisdiction for the trial of petty offences, belongs to the Courts of Justices of the Peace, Mayors and Recorders. *77. 186*

ART. 798. On the trial before a Justice, Mayor or Recorder, of any offence committed by a slave or free person of color, if the offence be of higher grade than theft of property not equal in value to twenty dollars, the defendant is entitled to be tried by a jury.

ART. 799. The grade of offences is determined by the amount of punishment; an offence, therefore, to which the punishment affixed is greater than that which is affixed to theft of property, of less amount than twenty dollars, is said to be of higher grade than such theft.

ART. 800. All general provisions in the first and second Parts of this Code having reference to rules of evidence, or of construction, and all special rules for ascertaining the nature and degree of crime, are equally applicable to offences committed by slaves and free persons of color, subject to such modifications as are provided in this Part of the Code.

ART. 801. A slave or free person of color when tried for a penal offence, is in law a person, but his personal rights are to be controlled by the provisions of this Part of the Penal Code, and are subject to rules different from those which would be applied in the case of a free white person, arising from the peculiar position of these classes of persons in society.

TITLE I.

RULES APPLICABLE TO OFFENCES AGAINST THE PERSON, WHEN COMMITTED BY SLAVES OR FREE PERSONS OF COLOR.

ARTICLE 802. The offences enumerated in Title XVII, of the Second Part of this Code, when committed by slaves or free persons of color against a free white person, are subject to different rules from such as are prescribed in defining such offences when committed by a free white person, and the guilt or innocence of the accused is to be ascertained by a consideration of the following general principles:

annex.
77-16.

1. The right of the master to the obedience and submission of his slave, in all lawful things, is perfect; and the power belongs to the master to inflict any punishment upon the slave not affecting life or limb, and not coming within the definition of cruel treatment, or unreasonable abuse, which he may consider necessary for the purpose of keeping him in such submission, and enforcing such submission to his commands; and, if in the exercise of this right, with or without cause, the slave resist and slay his master, it is murder.

2. The master has not the right to kill his slave, or to maim or dismember him, except in cases mentioned in Article 564 of this Code.

3. A master, in the exercise of his right to perfect obedience on the part of the slave, may correct in moderation, and is the exclusive judge of the necessity of such correction, and resistance by the slave under such circumstances, if it result in homicide, renders him guilty of murder.

4. The insolence of a slave will justify a white man in inflicting moderate chastisement, with an ordinary instrument of correction, if done at the time when the insolent language is used, or within a reasonable time after, but it will not authorize an excessive battery, as with a dangerous weapon.

5. The rules respecting manslaughter, as given in the Second Part of this Code, apply only to equals, and not to the case of offences by slaves or free persons of color against free white persons.

6. An assault and battery, not inflicting great injury, committed by a free white person upon a slave, will not be a sufficient provocation to mitigate a homicide of the former by the latter, from murder to manslaughter, although it be in a case where the law does not expressly justify such assault and battery.

7. That amount of personal injury is a legal provocation, of which it can be pronounced, having due regard to the relative condition of the white man and slave, and the obligation of the latter to conform his passions to his condition of inferiority, that it would provoke well disposed slaves into a violent passion, and the existence of such provocation will reduce the homicide to manslaughter.

8. If a slave, by insolence, provoke chastisement, and then slay the person chastising him, it will be murder ; but if the chastisement be unreasonable and excessive the killing will be manslaughter.

9. In the following cases, it is lawful for a free white person to inflict chastisement upon a slave by moderate whipping :

1. If a slave, without the consent of the white person, be found upon his premises at night ;

2. If the slave, against the orders of the white person, be found upon his premises at any time ;

3. If a slave be found using improper language, or guilty of indecent or turbulent conduct in the presence of white persons ;

4. If the slave be guilty of rude or unbecoming conduct in the presence of a free white female ;

5. If a slave use insulting language or gestures towards a white person ;

6. If a slave commit any willful act injurious to the property or person of a free white person, or of any member of his family ;

7. If a slave be found drunk and making a disturbance in any public place, or upon the premises of a free white person.

Repealed
VII. 189
ART. 803. The term master includes the person having lawful control of a slave as executor, administrator, or guardian, and the hirer of a slave upon a lawful contract.

ART. 804. Patrols or others, authorized by law to punish slaves, may inflict moderate chastisement, and the rights and duties of a slave, under such circumstances, are governed by the same rules which would apply to the case of the master enforcing lawful obedience.

ART. 805. The rules prescribed in Article 802, with respect to the conduct of slaves under particular circumstances, are also applicable to the case of free persons of color residing in this State, whether with or without authority of law, except so much of said Article as refers particularly to the relationship of master and slave.

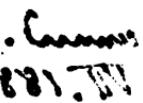
ART. 806. A free person of color residing in the State in violation of law, is, in all respects, upon a footing of equality, as to his personal rights, with a slave.

ART. 807. In every case of offences committed by slaves against the person of free persons of color, or of free persons of color against the persons of slaves, the parties are deemed to stand upon terms of equality.

ART. 808. If it shall appear on trial of any slave or free person of color, for the killing of, or personal injury to a white person, that the person killed or injured was in the habit of association with slaves or free negroes, and by his general conduct placed himself upon an equality with these classes of persons, the rights of the slave or person of color are to be governed by the same rules which would apply if the offence had been committed upon the person of a slave or free person of color, except in cases where the person injured is a minor, under the age of eighteen years.

ART. 809. The preceding Article does not apply where the injury was done to the master of the slave, or to any member of the family of the master.

ART. 810. When it shall appear on trial of any slave, before a Justice or Mayor, for an offence punishable only by whipping, that such slave has been chastised by his master, or under his orders, to the extent which the law would authorise, in case of his conviction, no further punishment shall be inflicted by the Justice or Mayor; and in like manner, where by law a person other than the master of the slave is authorised to inflict chastisement by whipping, and it appears that such chastisement, to the extent authorised by law has been inflicted for a petty offence, punishable by whipping only, such slave shall not be subject to further punishment by the Justice or Mayor.



TITLE III.

OF THE PUNISHMENT OF SLAVES AND FREE PERSONS OF COLOR.

CHAPTER I.

OF SLAVES.

§ I.

General Provisions.

ARTICLE 811. Slaves are not punishable by fine, or by imprisonment in the Penitentiary or House of Correction.

amend. ART. 812. Slaves are subject to the following punishments:

- VII. 188*
1. Death.
 2. Branding.
 3. Standing in the Pillory.
 4. Whipping.

ART. 813. The punishment of death is inflicted by hanging, in the same manner as in the case of free white persons.

Amended *VII. 189* { ART. 814. The punishment of branding is inflicted with a hot iron, in the shape of the letter C, upon the left cheek.

ART. 815. The punishment of branding shall be so inflicted as to produce no greater pain than that which is unavoidable, and in such manner as only to leave an indelible impression, and not to lacerate the cheek.

ART. 816. Whipping is inflicted upon the bare back, and when not specially directed otherwise, it shall in all cases be construed to mean thirty-nine lashes. *annex.* *WT. 188*

ART. 817. When it is not otherwise directed, whipping shall be inflicted in public, or in private, at the discretion of the jury or court trying the offender, and the judgment shall direct the manner of inflicting the chastisement.

ART. 818. If in any county a public Pillory be erected by the County Court, punishment by standing in the Pillory may be substituted for all offences punishable by whipping, or, in aggravated cases, the punishment of the Pillory may be added to that of whipping. *Repealed* *WT. 189* *881. 1881.*

§ II.

OF THE PUNISHMENT OF PARTICULAR OFFENCES.

ART. 819. The following offences, when committed by slaves, shall be punished by death: first, murder; second, insurrection; third, arson; fourth, rape. *annex.* *WT. 188*

ART. 820. The following offences, when committed by slaves, shall be punished by branding: first, burglary; second, robbery; third, assaults with intent to commit murder, rape, or robbery; fourth, attempts to commit arson, or rape; fifth, assault with a deadly weapon upon a white person in any case except self defence; sixth, theft, when the conviction is for the third offence; seventh, manslaughter. *Repealed* *WT. 189* *881. 1881.*

ART. 821. All offences not specially enumerated, when committed by slaves, shall be punished by whipping, which may be public or private, at the discretion of the jury or court.

CHAPTER II.

OF FREE PERSONS OF COLOR.

amend.

ART. 822. Free persons of color are subject to the following punishments: 1. Death. 2. Branding. 3. Imprisonment to labor in the Penitentiary. 4. Whipping or standing in the Pillory. 5. Labor upon any public works of a county.

VII. 188

ART. 823. All offences which by law are capitally punished, in the case of a free white person, shall also be punished capitally when committed by a free person of color, and the jury are at liberty to affix, in any case, the alternate punishment of imprisonment in the Penitentiary, for life, or a term of years, according to the aggravation of the offence.

ART. 824. Arson, robbery, aiding in an insurrection of slaves, rape of a free white female, when committed by a free person of color, shall be punished by death, or by imprisonment in the Penitentiary, for life, or a term of year.

ART. 825. For any of the offences named in the two preceding Articles, if the defendant be sentenced to the Penitentiary, branding may be also added as a part of the punishment.

Repealed

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ART. 826. The following offences, to wit: manslaughter, assault with intent to murder, burglary, theft upon the third conviction, kidnapping of a free white woman, and all offences not heretofore spoken of, for which a free white person is liable to be sentenced to the Penitentiary, shall be punished, when committed by a free person of color, with branding and imprisonment in the Penitentiary for a term of years not exceeding five, or by either of these punishments.

ART. 827. For the offence of enticing away a slave from his master, a free person of color may be punished as directed in the preceding Article, or by confinement in the Penitentiary and whipping.

ART. 828. A free person of color found guilty of theft to the amount of twenty dollars or more, shall be punished by whipping, and shall, in addition thereto, be subject to be compelled to work upon the road or any public work of the coun-

ty where he is convicted, under the direction of the County Court, for a term not exceeding six months.

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ART. 829. For all other offences not herein provided for, a free person of color may be punished, by whipping, or by standing in the pillory, or by being forced to work upon the roads or other public works of the county where he is convicted, under the directions of the County Court, for a term not exceeding six months.

SECTION 2. The following acts and parts of acts, to wit:

An act punishing crimes and misdemeanors, passed December 21, 1836.

An act supplementary to an act for the punishment of crimes and misdemeanors, passed December 21, 1836.

An act to suppress gambling, passed May 26, 1837.

An act amending the judiciary laws of the Republic, passed December 18, 1837.

The eighth and ninth sections of an act to legalize certain marriages, to provide for the celebration of marriages, and for other purposes, passed June 5, 1837.

An act to punish certain offences therein named, passed January 15, 1839.

An act to prohibit the driving of cattle from that part of the country west of the Guadalupe, passed January 19, 1839.

An act to amend the Judiciary laws of the Republic, passed January 23, 1839.

An act to provide for the punishment of horse thieves, passed January 26, 1839.

An act to suppress duelling, passed January 28, 1840.

An act to punish swindling and other offences therein named, passed February 5, 1840.

An act to suppress gaming, passed February 5, 1840.

An act to punish persons concerned in making, selling and locating fraudulent land certificates, passed February 5, 1840.

An act concerning slaves, passed February 5; 1840.

An act to amend an act to suppress gaming, passed December 24, 1840.

The fifth section of an act regulating the sale of runaway slaves, passed February 5, 1841.

An act to make certain offences therein named grand larceny, and to prescribe their punishment, passed February 4, 1841.

An act to amend the criminal laws of the Republic of Texas, passed January 16, 1844.

An act to prevent the obstruction of navigable rivers and streams, passed February 3, 1844.

An act to fix the currency in which fines and forfeitures shall be recoverable, passed January 17, 1844.

An act to protect religious meetings, passed April 23, 1848.

An act to exclude from office, serving on Juries, and from the rights of suffrage, all persons who may be hereafter convicted of bribery, perjury, subornation of perjury, forgery, counterfeiting, larceny or other felony or treason, against this State, or the United States, passed April 2, 1846.

An act regulating appeals to the Supreme Court in criminal cases, passed May 13, 1846.

An act requiring juries in certain criminal cases to assess the amount of fine to be imposed, or punishment to be inflicted, passed April 30, 1846.

The fourteenth, fifteenth, sixteenth, twenty-second, twenty-third, twenty-fourth and twenty-fifth sections of an act regulating juries, passed May 4, 1846.

An act to amend the seventeenth and nineteenth sections of an act regulating juries, passed March 16, 1848.

An act to prevent confusion in judicial proceedings arising from a repeal of laws under which they were had or occurred, passed May 13, 1846.

An act giving concurrent jurisdiction to the District and inferior Courts, in certain cases, passed May 11, 1846.

An act to amend the forty-third section of an act punishing crimes and misdemeanors, approved December 21, 1836, passed March 15, 1848.

An act to amend the third section of an act entitled an act concerning slaves, approved February 5, 1840, passed February 14, 1848.

An act to prevent burning the woods and prairies, passed March 18, 1848.

An act prescribing the punishment for cutting down, carrying away, or destroying trees, or timber, upon any land, without the consent of the owner, passed March 20, 1848.

An act concerning crimes and punishments, passed March 20, 1848.

An act prescribing in what cases the Governor may remit fines and forfeitures, passed February 26, 1848.

An act appropriating certain fines and forfeitures, passed March 18, 1848.

Joint Resolution for the punishment of vagrants, passed January 10, 1839.

The fourth section of an act defining the duties of District Attorneys, passed March 13, 1846.

The fourth and fifth sections of an act defining the duties of the Attorney General of the State of Texas, passed May 11, 1846.

The fifth, sixth and seventh sections of an act defining the office and duties of Constables, passed May 12, 1846.

An act supplementary to an act concerning crimes and punishments, approved March 20th, 1848, passed February 11, 1854.

An act concerning offences against life or person, passed January 31, 1854.

An act to prohibit individuals from issuing bills, checks, promissory notes, or other paper, to circulate as money, passed April 7, 1846.

An act to give the right of appeal in cases of Habeas Corpus, passed Feb. 5, 1853.

An act to establish a State Penitentiary, passed March 13, 1848, except the first, second, third and fourth sections of said act, and except also so much of the fifth section of said act as provides for the appointment of three Directors of the Penitentiary.

An act supplementary to an act to establish a State Penitentiary, approved 13th March, 1848, passed February 16, 1852.

An act concerning free persons of color, passed February 5, 1840.

An act to provide for the punishment of crimes and misdemeanors, committed by slaves and free persons of color, passed December 14, 1837.

An act supplementary and amendatory of certain acts therein named, passed January 22, 1841.

An act to prevent slaves from hiring their own time, or their owners from hiring them to other slaves, free negroes, or mulattoes, passed May 11, 1846.

An act concerning offences committed by negroes, passed February 3, 1853.

Together with all other laws and parts of laws relating to crimes and punishments, are hereby repealed.

SECTION 3. This act shall take effect on the first day of February, 1857.

Approved, 28th August, 1856.

NOTE!

In examining the Penal Code it will be perceived that there is a confusion in the numbering of the Articles. This was alluded to in a preliminary notice. The object of this note is only to show how these errors appear upon the face of the enrolled copy of the Act. In that copy, Article 220 α is not numbered at all. Article 290 α is numbered 290, being the same as the preceding Article. Article 362 α is made a part of 362, though a different subject altogether. Article 582 is subdivided, so as to begin a new Article (numbered 583,) at the word "discharging." Article 612 α is numbered 612, the same as the preceding Article. Article 622 α is numbered 622, the same as the preceding Article. The number of Article 725 α is left blank. The plan adopted in correcting these errors, was the only feasible one which suggested itself to restore the sense, and at the same time leave the Enrolled Bill to stand as it came into the State Department. There are some other awkward looking appearances in the Code as published, such as an Article at times entirely out of place; only one will be here noticed, but others cannot fail to be detected. At page 66, under the head of "Extortion by Officers," Article 354, an amendment of the Legislature is placed—it has no reference whatever to the subject. Whether this be an error in enrolling, or an oversight in making the amendment, cannot be ascertained. It, however, only affects the arrangement, and not the substance of the Act.

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THE CODE

OF

CRIMINAL PROCEDURE

OF

THE STATE OF TEXAS.

ADOPTED BY THE SIXTH LEGISLATURE.

GALVESTON:

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1857.

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THE CODE
OF
CRIMINAL PROCEDURE.

AN ACT
TO ESTABLISH A CODE OF CRIMINAL PROCEDURE
FOR THE STATE OF TEXAS.

WHEREAS, it is the duty of every Government to prescribe plain rules in reference to the prevention and prosecution of crime, by means of which the rights of citizens shall be protected, the innocent acquitted and the guilty brought to certain punishment, which rules ought to be definite and easy of comprehension, so that every officer may understand his duties and every citizen his rights. Therefore,

Be it enacted by the Legislature of the State of Texas,

SECTION 1. The following Code is hereby established, and shall be called The Code of Criminal Procedure.

INTRODUCTORY TITLE.

CHAPTER I.

CONTAINING GENERAL PROVISIONS.

ARTICLE 1. It is hereby declared that this Code is intended to embrace fully all the rules applicable to the prevention and prosecution of offences against the laws of this State. Its leading objects are to destroy all technical rules derived from other systems of law, and to make the rules of proceeding, in respect to the prevention and punishment of offences, plain and intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them.

It seeks, 1st. To adopt measures for preventing the commission of crime.

2d. To exclude the offender from all hope of escape.

3d. To ensure a trial with as little delay as shall be consistent with the ends of justice.

4th. To bring to the investigation of each offence, on the trial, all the evidence tending to produce conviction or acquittal.

5th. To ensure a fair and impartial trial, and

6th. The certain execution of the sentence of the law when declared.

ART. 2. In order to collect together, for the convenience of officers and all others charged with the enforcement of the laws, the material provisions of the Constitution of this State respecting the prosecution of offences, the following provisions of said instrument are here inserted :

ART. 3. No citizen of this State shall be deprived of life, liberty, property or privileges, outlawed, exiled, or in any manner disfranchised, except by due course of the law of the land.

[*Bill of Rights, Section 16.*]

ART. 4. In all criminal prosecutions, the accused shall have a speedy public trial by an impartial jury ; he shall not be compelled to give evidence against himself ; he shall have the right of being heard by himself or counsel, or both—shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor ; and no person shall be holden to answer for any criminal charge, but on indictment or information, except in cases arising in the land or naval forces, or offences against the laws regulating the militia.

[*Bill of Rights, Section 8.*]

ART. 5. The people shall be secure in their (persons,) houses, papers and possessions from all unreasonable seizures, or searches ; and no warrant to search any place or seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.

[*Bill of Rights, Section 7.*]

ART. 6. All prisoners shall be bailable by sufficient sureties, except for capital offences when the proof is evident or the presumption great ; but this provision shall not be so construed as to prohibit bail after indictment found, upon an examination of the evidence by a Judge of the Supreme or District Court, upon the return of a writ of habeas corpus, returnable in the county where the offence is committed.

[*Bill of Rights, Section 9.*]

ART. 7. The privilege of the writ of habeas corpus shall not be suspended, except when, in case of rebellion or invasion, the public safety may require it.

[*Bill of Rights, Section 10.*]

ART. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All Courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law.

[*Bill of Rights, Section 11.*]

ART. 9. No person, for the same offence, shall be twice put in jeopardy of life or limb, nor shall a person be again put upon trial for the same offence, after a verdict of not guilty ; and the right of trial by jury shall remain inviolate.

[*Bill of Rights, Sec. 12.*]

ART. 10. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the Court, as in other cases.

[*Bill of Rights, Sec. 6.*]

ART. 11. Electors, in all cases, shall be privileged from arrest during their attendance at elections, and in going to and returning from the same, except in cases of treason, felony, or breach of the peace. [*State Constitution, Art. 3, Sec. 3.*]

ART. 12. Senators and Representatives shall, in all cases, except in treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened.

[*State Constitution, Art. 3, Sec. 16.*]

ART. 13. Justices of the Peace shall have such civil and criminal jurisdiction as shall be provided for by law.

[*State Constitution, Art. 4, Sec. 17.*]

ART. 14. In all cases where Justices of the Peace, or other judicial officers of inferior tribunals, shall have jurisdiction in the trial of causes, where the penalty for the violation of law is fine or imprisonment, (except in cases of contempt,) the accused shall have the right of trial by jury.

[*State Constitution, Art. 4, Sec. 19.*]

ART. 15. The style of all writs and process shall be "The State of Texas." All prosecutions shall be carried on in the name and by the authority of the "State of Texas," and conclude "against the peace and dignity of the State."

[*State Constitution, Art. 4, Sec. 9.*]

ART. 16. In the prosecution of slaves for crimes of a higher grade than petit larceny, the Legislature shall have no power to deprive them of an impartial trial by a petit jury.

[*Constitution, Art. 8, Sec. 2.*]

Repealed
ART. 17. No person, by the Bill of Rights, can be punished in any manner, for any offence, except by due course of law. It being deemed advisable to give Legislative construction to this provision, the same is declared to mean that no person shall be punished, except after *legal conviction in a Court of competent jurisdiction.*

ART. 18. No person for the same offence can be twice put in jeopardy of life or limb. This is intended to mean that no person can be subjected to a second prosecution for the same offence, after having been once prosecuted in a Court of competent jurisdiction and duly convicted.

ART. 19. The foregoing article will exempt no person from a second trial, who has been convicted upon an illegal indictment or information, and the judgment thereupon arrested, nor where a new trial has been granted to the defendant, nor where a jury has been discharged without rendering a verdict, nor for any case other than that of a legal conviction.

ART. 20. By the provisions of the Constitution, an acquittal of the defendant exempts him from a second trial, or a second prosecution for the same offence, however irregular the proceedings may have been; but if the defendant shall have been acquitted upon trial, in a Court having no jurisdiction of the offence, he may, nevertheless, be prosecuted again in a Court having jurisdiction.

ART. 21. Before conviction, a person imprisoned or detained in custody shall be subjected only to sufficient restraint to prevent his escape; but it is the duty of the officer having charge of such person to use the necessary force for his detention and to ensure his being brought to trial.

ART. 22. When a person is entitled to a trial by jury, he cannot be convicted of an offence except upon a plea of *guilty*, or upon the verdict of a jury duly rendered and recorded.

ART. 23. The proceedings and trials in all Courts shall be public.

ART. 24. The defendant, upon trial, shall be confronted with the witnesses, except in certain cases provided for in this Code, where depositions have been taken.

ART. 25. The provisions of this Code shall be liberally construed, so as to attain the objects intended by the Legislature, the prevention, suppression and punishment of crime.

ART. 26. The defendant to a criminal prosecution for any offence may waive any right secured to him by law, except the right of trial by jury when he has pleaded not guilty.

ART. 27. Whenever it is found that this Code fails to provide a rule of procedure in any particular state of case which may arise, and is therefore defective, the rules of the Common Law shall be applied and govern when they are not inconsistent with the general principles on which this system of procedure is founded.

CHAPTER II.

THE GENERAL DUTIES OF OFFICERS CHARGED WITH THE ENFORCEMENT OF THE PENAL LAWS.

§ I.

The Attorney General and the District Attorney.

ARTICLE 28. It is the duty of the Attorney General to represent the State in all criminal cases in the Supreme Court, except in cases where he may have been employed adversely to the State previously to his election; and he shall not, except in such cases, appear as counsel against the State in any Court.

ART. 29. He shall, also, in cases of felony, represent the State in proceedings before an examining court, or on the hearing of applications under habeas corpus, if he be in the county where such proceeding takes place, and be notified thereof.

ART. 30. It is the duty of each District Attorney to represent the State in all criminal cases, in the District Courts of his District, except in cases where he has been before his election employed adversely, and he shall not, except in such case, appear as counsel against the State in any Court.

ART. 31. He shall, also, when any criminal proceeding is had before an examining court, or before a Judge upon habeas corpus, represent the State, if he is at the time within the county where such proceeding is had.

§ II.

Magistrates.

ARTICLE 32. It is the duty of every officer, known in this Code as a "Magistrate," to preserve the peace within his jurisdiction, by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders, by the use of lawful means, in order that they may be brought to punishment.

ART. 33. A Chief Justice of a county, County Commissioner, Justice of the Peace, or Coroner, who, when legally applied to, refuses to issue process, or who knowingly and corruptly refuses to discharge a duty imposed upon him by the provisions of this Code, is guilty of an offence for which he is subject to removal, upon trial and conviction.

§ III.

Peace Officers.

ARTICLE 34. It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose he shall use all lawful means. He shall, in every case where he is authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime. He shall execute all lawful process issued to him by any Magistrate or Court. He shall give notice to some Magistrate of all offences committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper Magistrate or Court and be brought to punishment.

ART. 35. Any peace officer who willfully neglects to execute process in a criminal case, or who willfully fails or refuses to interfere for the preservation of the peace, or for the arrest of offenders, when authorized by law to do so, is guilty of an offence, for which, on conviction, he is liable to be removed from office, and shall incur such other punishment as may be prescribed by law.

ART. 36. A warrant of arrest may be executed by any peace officer into whose hands it may come, except in certain special cases provided for in this Code.

ART. 37. Each Sheriff is the keeper of the jail of his county, and responsible for the safe keeping of all prisoners committed to his custody.

ART. 38. When a prisoner is committed to jail by lawful warrant from a Magistrate or Court, he shall be placed in jail by the Sheriff; and it is a violation of duty on the part of any Sheriff to permit a defendant so committed to remain out of jail, except that he may, when a defendant is committed for want of bail, or when he arrests after indictment or information in a bailable case, give the person arrested a reasonable time to procure bail, but in the meanwhile he shall so guard the accused as to prevent his escape.

ART. 39. The Sheriff shall, at each term of the Court, give notice to the District Attorney as to all prisoners in his custody, and of the authority under which he detains them.

ART. 40. The Sheriff may appoint a jailor to take charge of the jail, and supply the wants of a person therein confined; and the person so appointed is responsible for the safety of prisoners, and liable to punishment, as provided by law, for negligently or willfully permitting a rescue or escape. But the Sheriff shall, in all cases, exercise a supervision and control over the jail.

ART. 41. The Sheriff shall be paid by the County Court fifty cents a day for each prisoner committed to his custody, during the time such prisoner is in jail.

ART. 42. When it becomes necessary to employ a guard for the safe keeping of prisoners, the Sheriff shall be allowed one dollar a day for each person employed as a guard, and an additional allowance for the board of such guard.

ART. 43. When there is no jail in a county, the Sheriff may rent a suitable house and employ guards, all of which expenses shall be paid by the County Court of the proper county.

ART. 44. Whenever a peace officer meets with resistance in discharging any duty imposed upon him by law, he shall summon a sufficient number of citizens of his county to overcome the resistance, and all persons summoned are bound to obey; and if they refuse are guilty of an offence.

ART. 45. The peace officer who has summoned any person to assist him in performing any duty, shall report such person if he refuse to obey, to the District Attorney of the proper district in order that he may be prosecuted for the offence.

ART. 46. Wherever a duty is imposed by this Code upon the Sheriff, the same duty may lawfully be performed by his deputy, and when there is no Sheriff in a county, the duties of that office, as to all proceedings under the criminal law, devolve upon the officer, who, under the law, is empowered to discharge the duties of Sheriff in cases of vacancy in the office.

§ IV.

Clerk of the District Court.

ARTICLE 47. It is the duty of every Clerk of the District Court to receive and file all papers in respect to criminal proceedings, to issue all process in such cases, and to perform all other duties imposed upon him by this Code, or the penal laws of the State, and a willful failure to perform any such duties renders him liable to prosecution for an offence, in accordance with the provisions of the Penal Code.

ART. 48. Wherever a duty is imposed upon the Clerk of the District Court the same may be lawfully performed by his deputy.

CHAPTER III.**CONTAINING DEFINITIONS.**

ARTICLE 49. All words and phrases used in this Code are to be taken and understood in their usual acceptation, in common language, except where their meaning is particularly defined in this or the Penal Code. *amend.* *M. 229*

ART. 50. The words and terms made use of in this Code, unless herein specially excepted, have the meaning which is given to them in the Penal Code, and are to be construed and interpreted as therein declared.

ART. 51. A criminal action is prosecuted in the name of the State of Texas against the person accused, and is conducted by some officer or person acting under the authority of the State, in accordance with its laws.

TITLE II.

OF THE DISTRICT COURTS.

ARTICLE 59. The District Courts have original jurisdiction of all criminal actions.

By virtue of this general jurisdiction, they have power :

1. To enquire, by the intervention of a grand jury, of all offences committed or triable within their respective jurisdictions.

2. To hear and determine all prosecutions in the name of the State, by indictment or information, for all offences committed within their respective jurisdictions.

3. To enquire into the cause of the detention of persons imprisoned in the jails of their respective counties, and make all necessary orders for their recommitment, discharge, or admission to bail, by the writ of habeas corpus, or in such other manner as may be prescribed by law.

4. To exercise all other powers conferred by this Code.

ART. 60. Each District Judge has power to issue the writ of habeas corpus, and have brought before him any person imprisoned or otherwise illegally detained in custody, in any county, whether within or out of his district, and make such order on the return of the writ as the law and the facts of the case may require, whether the person detained has been indicted or not, under the restrictions herein prescribed.

TITLE III.

OF THE JUSTICES, MAYORS AND RECORDERS COURTS.

ARTICLE 61. Justices of the Peace have jurisdiction to try and determine criminal actions against persons accused of the following offences : *and 83*

1. Simple Assaults and Batteries.
2. Affrays.
3. Violations of the penal law with regard to gaming, where the highest penalty does not exceed one hundred dollars.
4. Violations of the law prohibiting the sale of liquor to slaves and free persons of color, and trading with slaves.
5. Petty offences committed by slaves and free persons of color.
6. Cases of vagrants and disorderly persons.

ART. 62. The jurisdiction of Justices' Courts is concurrent with that of the District Courts as to the offences named in the preceding Article, except as to the jurisdiction conferred in the fifth and sixth subdivisions thereof, in which cases the Justices of the Peace have exclusive jurisdiction.

ART. 63. The Justices' Courts have no jurisdiction to try offences where deadly weapons were used, or attempted to be used, by the party accused.

ART. 64. They have all such other jurisdiction in criminal actions as is conferred by this Code, under the rules and regulations prescribed by the law.

ART. 65. Justices of the Peace may sit at any time to try criminal causes over which they have jurisdiction. Mayors and Recorders of incorporated towns and cities have the same jurisdiction as Justices of the Peace within the limits of their respective incorporations, and all the provisions of this Title have reference to Mayors and Recorders as well as to Justices' Courts.

PART II.

OF THE PREVENTION AND SUPPRESSION OF OFFENCES, AND OF THE WRIT OF HABEAS CORPUS.

TITLE I.

OF PREVENTING OFFENCES BY THE ACT OF A PRIVATE PERSON.

ARTICLE 66. The commission of offences may be prevented either

1. By lawful resistance, or
2. By the intervention of the officers of the law.

Resistance to the offender may be made as hereinafter pointed out, either by the person about to be injured, or by some person in his behalf.

ART. 67. Resistance by the party about to be injured may be used to prevent the commission of any offence, which, in the Penal Code, is classed as an "offence against the person."

ART. 68. Resistance may also in like manner be made by the person about to be injured, to prevent any illegal attempt by force to take or injure property in his lawful possession.

ART. 69. The resistance which the person about to be injured may make, to prevent the commission of the offence, must be proportioned to the injury about to be inflicted. It must be only such as is necessary to repel the aggression.

ART. 70. If the person about to be injured in respect either to his person or property, uses a greater amount of force to resist such injury than is necessary to repel the aggressor and protect his own person or property, he is himself guilty of an illegal act, according to the nature and degree of the force which he has used.

ART. 71. Any person other than the party about to be injured may also, by the use of necessary means, prevent the commission of the offence.

ART. 72. The same rules which regulate the conduct of the person about to be injured, in repelling the aggression, are also applicable to the conduct of him who interferes in behalf of such person. He may use a degree of force proportioned to the injury about to be inflicted, and no greater.

TITLE II.

OF PREVENTING OFFENCES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS.

CHAPTER I.

THE DUTY OF MAGISTRATES AND OTHER OFFICERS IN PREVENTING OFFENCES.

ARTICLE 73. It is the duty of every Magistrate when he may have heard, in any manner, that a threat has been made by one person to do some injury to the person or property of another, immediately to give notice to some peace officer, in order that such peace officer may use lawful means to prevent the injury.

ART. 74. Wherever, in the presence or within the observation of a Magistrate, an attempt is made by one person to inflict an injury upon the person or property of another, it is his duty to use all lawful means to prevent the injury. This

may be done either by verbal order to a peace officer to interfere and prevent the injury, or by the issuance of an order of arrest against the offender, or by arresting the offender; for which purpose he may call upon all persons present to assist in making the arrest.

ART. 75. If within the hearing of a Magistrate one person shall threaten to take the life of another, he shall issue a warrant for the arrest of the person making the threat, or, in case of emergency, he may himself immediately arrest such person.

ART. 76. When the person making such threat is brought before the Magistrate, he may compel him to give security to keep the peace, or commit him to custody, in the manner hereafter provided.

ART. 77. It is the duty of every peace officer, when he may have been informed in any manner that a threat has been made by one person to do some injury to the person or property of another, to prevent the threatened injury, if within his power, and in order to do this he may call in aid any number of citizens in his county. He may take such measures as the person about to be injured might, for the prevention of the offence.

ART. 78. Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offence against the person or property of another, it is his duty to prevent it, and for this purpose he may summon any number of citizens of his county to his aid. He must use the amount of force necessary to prevent the commission of the offence, and no greater.

ART. 79. The conduct of peace officers, in preventing offences about to be committed in their presence, or within their view, is to be regulated by the same rules as are prescribed to the action of the person about to be injured. They may use all force necessary to repel the aggression.

CHAPTER II.

PROCEEDINGS BEFORE MAGISTRATES FOR THE PURPOSE OF
PREVENTING OFFENCES.

ARTICLE 80. Whenever a Magistrate is informed upon oath, that an offence is about to be committed against the person or property of the informant, or of another, or that any person has threatened to commit such offence, it is his duty immediately to issue a warrant for the arrest of the accused, that he may be brought before such Magistrate, or before some other named in the warrant.

ART. 81. When the person accused has been brought before the Magistrate, he shall hear proof as to the accusation, and if he be satisfied that there is just reason to apprehend that the offence was intended to be committed, or that the threat was seriously made, he shall make an order that the accused enter into bond in such sum as he may in his discretion require, conditioned that he will not commit such offence, and that he will keep the peace towards the person threatened, or about to be injured, and towards all others, for one year from the date of such bond.

ART. 82. If the defendant refuse to give bond, he shall be committed to the jail of the county, or if there be no jail, to the custody of the Sheriff.

ART. 83. The warrant issued by a Magistrate in cases provided for in Articles 75 and 80, shall be sufficient if it state the name of the defendant, or, if unknown, describe him, and set forth in plain words the nature of the accusation against him, be signed by the Magistrate and dated.

ART. 84. The bond taken by the Magistrate in the cases provided for in Article 81, shall be sufficient if it be payable to the State of Texas, recite plainly the nature of the accusation against the defendant, be for some certain sum, and be signed by the defendant and his surety, and dated.

No error of form shall vitiate such bond, and no error in the proceedings, prior to the execution of the bond, shall be available as a defence in an action thereupon.

ART. 85. If the Magistrate be of opinion from the evidence, that there is no good reason to apprehend that the offence was intended or will be committed, or that no serious threat was made by the defendant, he shall discharge the person so accused, and may, in his discretion, tax the cost of the proceeding against the party making the complaint.

ART. 86. If the accused be committed for refusing or failing to give bond, he shall be discharged by any Magistrate upon his afterwards entering into bond in such amount as was fixed by the Magistrate who committed him.

ART. 87. If the condition of the bond be forfeited, it shall be sued upon in the name of the State of Texas, by the District Attorney, and the full amount of the same may be recovered against the principal and sureties.

ART. 88. Actions upon such bonds shall be commenced within two years from the breach of the same, and shall be governed by the rules applicable to civil actions, except that the sureties may be sued without joining the principal. It shall only be necessary in order to entitle the State to recover, to prove that the defendant did commit the offence which he bound himself not to commit, or failed to keep the peace according to his undertaking.

ART. 89. A surety upon any such bond may, at any time before a breach thereof, exonerate himself from the obligation of the same, by delivering to the Magistrate the person of the defendant, and the Magistrate shall, in that case, again require of the defendant bond with other surety, and the same proceedings be had as in the first instance.

ART. 90. Magistrates taking bonds under the provisions of this Chapter, shall be governed as to the amount of the bond by the pecuniary circumstances of the accused, and the nature of the offence threatened or about to be committed.—And they shall require the sureties of a defendant to make oath as to the value of their property, in the manner pointed out with regard to recognizances and bail bonds.

ART. 91. When the information given to the Magistrate is that the defendant has threatened the life of a person, he shall, in addition to the bond heretofore spoken of, require-

also of the defendant a bail bond with security, conditioned that he will appear at the next term of the District Court of the county to answer the accusation, which bail bond shall be filed with the Clerk of the District Court, shall have the same force as other bail bonds, and may be forfeited in the same manner.

ART. 92. When, from the nature of the case and the proof offered to the Magistrate, it may appear necessary and proper, he shall have a right to order any peace officer to protect the person or property of any individual threatened; and such peace officer shall have the right to summon aid by requiring any number of citizens of his county to assist in giving the protection.

ART. 93. The District Court, when in session, may, upon complaint made, cause the arrest of any person who might be arrested by a Magistrate under the provision of any of the preceding Articles, and require such person to enter into recognizance for the same purposes for which a Magistrate may require bond, may commit in default of security or discharge, according to the nature of the case.

ART. 94. All persons have a right to prevent the consequences of theft, by seizing any personal property which has been stolen, and bringing it with the supposed offender, if he can be taken, before a Magistrate for examination, or delivering it to a peace officer for that purpose. To justify such seizure there must, however, be reasonable grounds to suppose the thing to be stolen, and the seizure must be openly made, and the proceedings had without delay.

ART. 95. If any person shall make oath, and shall convince the Magistrate that he has good reason to believe that another is about to publish, sell, or circulate, or is continuing to sell, publish, or circulate any libel against him, or any such publication as is made an offence by the Penal Law of the State, the person accused of such intended publication may be required to enter into bond not to sell, publish, or circulate such libellous publication, and the same proceedings be had as in the cases before enumerated in this Chapter. In case the accused is found subject to the charge and required to give bond, the cost of the proceeding shall be taxed against him.

CHAPTER III.

OF THE SUPPRESSION OF RIOTS.

ARTICLE 96. When any officer, authorized to execute process, is resisted, or when he has sufficient reason to believe that he will meet with resistance in executing the same, he may command as many of the citizens of his county as he may think proper, and the Sheriff may call any military company in the county to aid him in overcoming the resistance, and, if necessary, in seizing and arresting the persons engaged in such resistance, so that they may be brought to trial.

ART. 97. It is a misdemeanor to refuse to obey an officer, when summoned by him for the purposes set forth in the preceding Article.

ART. 98. If it be represented to the Governor in such manner as to satisfy him that the power of the county is not sufficient to enable the Sheriff to execute process, he may, on application, order any military company of volunteers from another county to aid in overcoming such resistance.

ART. 99. Whenever a number of persons are assembled together in such a manner as to constitute a riot, according to the Penal Law of the State, it is the duty of every Magistrate or peace officer to cause such persons to disperse. This may either be done by commanding them to disperse, or by arresting the persons engaged, if necessary, either with or without warrant.

ART. 100. In order to enable the officer to disperse a riot, he may call to his aid the power of the county in the same manner as is provided where it is necessary for the execution of process.

ART. 101. If a Justice of the Peace, Mayor or any peace officer shall have notice of a riot, and shall fail to take measures necessary to suppress it, he is guilty of a misdemeanor.

ART. 102. The officer engaged in suppressing a riot, and those who aid him, are authorized and justified in adopting

such measures as are necessary to suppress the riot, but are not authorized to use any greater degree of force than is requisite to accomplish that object.

ART. 103. All the Articles of this Chapter, relating to the suppression of riots, apply equally to an unlawful assembly, as defined by the Penal Code.

ART. 104. Whenever, for the purpose of suppressing riots or unlawful assemblies, the aid of military companies is called, they shall obey the orders of the civil officer who is engaged in suppressing the same. Arms shall only be used where the rioters themselves are armed, and are using their arms. Nor shall it be permitted to fire upon the rioters except in cases of imminent peril, and in order to preserve the lives of the force engaged in suppressing the riot or other unoffending citizens.

ART. 105. The use of arms in suppressing a riot, if wantonly resorted to, or resorted to when it might have been suppressed without their use, is an offence.

ART. 106. For the purpose of suppressing riots, unlawful assemblies and other disturbances at elections, any Magistrate may appoint a sufficient number of special Constables. Such appointments shall be made to each special Constable, shall be in writing, dated and signed by the Magistrate, and shall recite the purposes for which such appointment is made, and the length of time the appointment is to continue, and before the same is delivered to such special Constable, he shall take an oath before the Magistrate to suppress, by lawful means, all riots, unlawful assemblies and breaches of the peace of which he may receive information, and to act impartially between all parties and persons interested in the result of the election.

ART. 107. Special Constables so appointed, shall, during the time for which they are appointed, exercise the powers and perform the duties properly belonging to peace officers.

TITLE III.

OF THE SUPPRESSION OF OFFENCES IN THEIR NATURE PERMANENT.

CHAPTER I.

OFFENCES WHICH AFFECT PUBLIC HEALTH.

ARTICLE 108. After an indictment or information has been presented against any person for carrying on a trade injurious to the health of those in the neighborhood, if it be charged in the indictment or information that any person has actually suffered in health on account of the carrying on of such trade or business, the Court shall have power, on the application of any one interested, and after hearing proof, both for and against the accused, to enjoin the defendant in such penalty as may be deemed proper not to carry on such occupation, or may make such other order respecting the manner and place of carrying on the same, as may be deemed advisable ; and if, upon trial, the defendant be convicted, the injunction shall be made perpetual, and the party be required to enter into bond not to continue such occupation. If he refuse to give the bond, the Court may either commit the party to jail, or make an order requiring the Sheriff to seize upon the implements of trade, or the goods and property used in conducting the business, and destroy the same. After conviction for selling unwholesome food or liquor, or adulterated medicine, the Court shall enter up an order to the Sheriff to seize and destroy such as remains in the hands of the defendant, which order shall forthwith be executed by the Sheriff.

ART. 109. If bond be given, it shall be payable to the State of Texas in a reasonable amount, to be fixed by the Court ; upon the breach thereof, it may be sued in the name of the State, by the District Attorney, and recovery had, upon

proving the breach, in the manner pointed out for suing on bonds, in Articles 87 and 88 ; and the full amount shall be recovered.

ART. 110. It is sufficient proof of the breach of any bond taken under the provisions of this Chapter, to show that the party continued, after executing the same, to carry on the occupation which he bound himself to discontinue.

CHAPTER II.

SUPPRESSION OF OFFENCES WHICH ARE INJURIOUS TO PROPERTY HELD IN COMMON FOR THE USE OF THE PUBLIC.

ARTICLE 111. Whenever any building, or other property, is held in common for the use of the public, it is unlawful for any person to place an obstruction which shall prevent the free use of such public property. *and* *M. 230*

ART. 112. Wherever any road, bridge, or the crossing of any stream, is made by the proper authority a public highway, it is unlawful for any person to place an obstruction across such highway, or in any other manner prevent the free use of the same by the public.

ART. 113. After indictment or information presented against any person for violating any provision of the two preceding Articles, any one in behalf of the public may apply to the Judge of the District Court of the proper county, and, upon hearing proof, such Judge, either in term time, or in vacation, may issue his written order to the Sheriff of the county, directing him to remove the obstruction, but the person giving the information shall be required to give bond with security, in an amount to be fixed by the Judge, to indemnify the accused, in case of acquittal, for the loss he sustains.

ART. 114. If the defendant to any such indictment, or information, be acquitted after a trial upon the merits of the case, he may maintain a civil action against the applicant in injunction and his sureties, and may recover the full amount of the bond, or such damages less than the full amount thereof as may be assessed by a jury, provided he shows on the trial, that the building or other property, in fact, belonged to him and not to the public, or in case the defendant was charged with obstructing a public highway, that the same was not, in fact, at the time he placed the obstruction or impediment thereupon, a public highway, established by proper authority, but was in fact his own property.

ART. 115. No mere defect of form shall vitiate any order or proceeding of the County Court in establishing a public highway.

CHAPTER III.

SUPPRESSION OF OFFENCES AFFECTING REPUTATION.

ARTICLE 116. On conviction for selling and publishing a libel, the court may, if it be shown that there are in the hands of the defendant, or other person, copies of such libel, intended for sale, publication, or distribution, order all such copies to be seized by the Sheriff and destroyed.

CHAPTER IV.

OF THE SUPPRESSION OF OFFENCES AGAINST PERSONAL LIBERTY.

ARTICLE 117. The writ of *Habeas Corpus* is the remedy to be used for the suppression of offences which affect the personal liberty of individuals.

§ I.

Definition and Object of the Writ.

ARTICLE 118. A writ of *Habeas Corpus* is an order issued by a Court or Judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody, or under restraint.

ART. 119. The writ, as all other process, runs in the name of "The State of Texas." It is to be addressed to the person having another under restraint, or in his custody, describing as near as may be the name of the office, if any, of the person to whom it is directed, and the name of the person said to be detained. It shall fix the time and place of return, and be signed by the Judge, or by the Clerk, with his seal, where issued by a Court.

ART. 120. The writ of *Habeas Corpus* is not invalid, nor shall it be disobeyed for any want of form, if it substantially appear that it is issued by competent authority, and the writ sufficiently show the object and design of its issuance.

ART. 121. Every provision relating to the writ of *Habeas Corpus* shall be most favorably construed, in order to give effect to the remedy, and protect the rights of the person seeking relief under it.

§ II.

By whom and when Granted.

ARTICLE 122. The Supreme Court, or either of the Judges, the District Courts, or either of the Judges, have power to issue the writ of Habeas Corpus, and it is their duty, upon proper application, to grant the writ under the rules herein prescribed.

ART. 123. Before indictment found, the writ may be made returnable to any county of the State.

ART. 124. After indictment found, the writ must be made returnable in the county where the offence has been committed, on account of which the applicant stands indicted.

ART. 125. In all cases where a person is confined on a criminal accusation, and indictment has been found against him, he may apply to the Judge of the District Court for the district in which he is indicted, or if there be no Judge within the district, then to the Judge of any district whose residence is nearest to the court-house of the county in which the applicant is held in custody.

ART. 126. When application has been made to a Judge, under the circumstances set forth in the preceding Article, it shall be his duty to appoint a time when he will examine the cause of the applicant, and issue the writ returnable at that time, in the county where the offence is charged in the indictment to have been committed. He shall also specify some place in the county where he will hear the application.

ART. 127. The time so appointed shall be the earliest day which the Judge can devote to hearing the cause of the applicant, consistently with his other duties.

ART. 128. Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief.

ART. 129. The word *applicant*, as used in this Chapter,

refers to the person for whose relief the writ is asked, though, as above provided, the petition may be signed and presented by any other person.

ART. 130. The petition must state substantially :

1. That the person for whose benefit the application is made is illegally restrained in his liberty, and by whom—naming both parties, if their names are known—or, if unknown, designating and describing them.
2. When the party is confined, or restrained by virtue of any writ, order or process, or under color of either, a copy shall be annexed to the petition, or it shall be stated that a copy cannot be obtained.
3. When the confinement or restraint is not by virtue of any writ, order or process, the petition may state only that the party is illegally confined or restrained of his liberty.
4. There must be a prayer in the petition for the writ of Habeas Corpus.
5. Oath must be made that the allegations of the petition are true, according to the belief of the petitioner.

ART. 131. The writ of Habeas Corpus shall be granted without delay, by the Judge or Court receiving the petition, unless it be manifest by the statements of the petition itself, or some document annexed to it, that the party is entitled to no relief whatever.

ART. 132. A Judge of the District Court who has knowledge that any person is illegally confined, or restrained in his liberty within his district, may issue the writ of Habeas Corpus without any application being made for the same.

ART. 133. Whenever it shall be made to appear by satisfactory evidence, to a Judge of the Supreme or District Court, that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury, before he can obtain relief in the usual course of law, or whenever a writ of habeas corpus has been issued and disregarded, the Supreme or District Court, or either of the Judges, may issue a warrant to any officer of the law, or to any person specially named by said Court or Judge, directing him to take and bring such person before him, to be dealt with according to law.

ART. 134. Where it appears by the proof offered, under circumstances mentioned in the preceding Article, that the person charged with having illegal custody of the prisoner, is by such act guilty of an offence against the law, the Judge may, in the warrant, order that he be arrested and brought before him; and upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require.

ART. 135. The officer charged with the execution of the warrant, shall bring the persons therein mentioned before the Judge or Court issuing the same, who shall inquire into the cause of the imprisonment or restraint, and make an order thereon, as in cases of habeas corpus, according to the rules laid down in this Chapter, either remanding into custody, discharging, or admitting to bail, the party so imprisoned or restrained.

ART. 136. The same power may be exercised by the officer executing the warrant, (and in like manner), in cases arising under the foregoing Articles, as is exercised in the execution of warrants of arrest, according to the provisions of this Code.

ART. 137. The words "confined," "imprisoned," "in custody," "confinement," "imprisonment," refer not only to the actual, corporal and forcible detention of a person, but likewise to any and all coercive measures by threats, menaces, or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits.

ART. 138. By "restraint" is meant that kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right.

ART. 139. The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law.

ART. 140. Where a person claiming to be free is held as

a slave, he may be relieved by habeas corpus, and if upon any such application the person so held is discharged, his discharge shall be evidence of his freedom against the person claiming him, unless such claimant shall, within three months thereafter, bring suit to establish his right to the services of the person so claimed.

ART. 141. Where a person has been committed to custody for failing to enter into bond, he is entitled to the writ of habeas corpus, if it be stated in the petition that there was no sufficient cause for requiring bail, or that the bail required is excessive; and if the proof sustains the petition, it will entitle the party to be discharged, or have the amount of the bail reduced according to the facts of the case.

ART. 142. When a Judge or Court authorized to grant writs of habeas corpus shall be satisfied, upon investigation, that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of his life, an order may be made for the removal of the prisoner to some other place, where his health will not be likely to suffer, or he may be admitted to bail when it appears that any species of confinement will endanger his life.

§ III.

Service and Return of the Writ, and Proceedings thereon.

ARTICLE 143. The service of the writ may be made by any free white person capable of giving testimony in Court.

ART. 144. The writ may be served by delivering a copy of the original to the person who is charged with having the party under restraint, or in custody, and exhibiting the original if demanded; if he refuse to receive it, he shall be informed verbally of the purport of the writ. If he refuse admittance to the person wishing to make the service, or conceal himself, a copy of the writ may be fixed upon some conspicuous part of the house where such person resides, or conceals himself, or of the place where the prisoner is confined,

and the person serving the writ of habeas corpus shall in all cases, state fully, in making return, the manner and time of the service of the writ.

ART. 145. The return of a writ of habeas corpus under the provisions of the preceding Article, if made by any person other than an officer, shall be under oath.

ART. 146. The person on whom the writ of habeas corpus is served, shall immediately obey the same and make the return required by law, upon the copy of the original writ served on him, and this whether the writ be directed to him or not.

ART. 147. The return is made by stating in plain language upon the copy of the writ, or some paper connected with it:

1. Whether it is true or not, according to the statement of the petition, that he has in his custody or under his restraint, the person named or described in such petition.

2. By virtue of what authority, or for what cause he took and detains such person.

3. If he had such person in his custody or under restraint at any time before the service of the writ, and has transferred him to the custody of another, he shall state particularly to whom, at what time, for what reason, or by what authority he made such transfer.

4. He shall annex to his return the writ or warrant by virtue of which he holds the person in custody, if any writ or warrant there be.

ART. 148. The return as provided in Articles 146 and 147 must be signed and sworn to by the person making it.

ART. 149. The person on whom the writ is served, shall bring also before the Judge the person in his custody or under his restraint, unless it be made to appear that by reason of sickness he cannot be removed, in which case another day may be appointed by the Judge or Court for hearing the cause and for the production of the person confined ; or the application may be heard and decided without the production of the person detained, by the consent of his counsel.

ART. 150. The Court or Judge granting the writ of habeas corpus shall allow reasonable time for the production of the person detained in custody.

ART. 151. When service has been made in either of the modes pointed out in Article 144, upon a person charged with the illegal custody of another, if he refuse to obey the writ and make the return required by law, or where he refuses, as mentioned in Article 144, to receive the writ, or conceals himself, the Court or Judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such Court or Judge ; and when such person shall have been arrested and brought before the Court or Judge, if he still refuse to return the writ, or do not produce the person in his custody, he shall be committed to prison and remain there until he is willing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding.

ART. 152. Any person disobeying the writ of habeas corpus, shall also be liable to a civil action at the suit of the party, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ, to be recovered in any Court of competent jurisdiction ; and it shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, and one additional day for every twenty miles he must necessarily travel in carrying the person held from the place of his detention to the place where the application is to be heard, unless where further time is allowed in the writ for making the return thereto.

ART. 153. In case of the disobedience of the writ of habeas corpus, the person for whose relief it is intended may also be brought before the Court or Judge having competent authority, by an order for that purpose issued to any peace officer or person specially named.

ART. 154. It is a sufficient return to the writ of habeas corpus, that the person once detained has died, or that by some superior force he has been taken from the custody of the person making the return ; but where any such cause shall be

assigned for not producing the applicant, the Court or Judge shall proceed to hear testimony, and the facts so stated in the return shall be proved by satisfactory evidence.

ART. 155. When a prisoner confined in jail shall die, the officer having charge of him shall forthwith report the same to the Coroner of the county, or any Justice of the Peace, and an inquest shall be held to ascertain the cause of his death ; which may be done by calling in any number of physicians and surgeons. All the proceedings had in such cases shall be certified and returned to the District Court of the proper county, and be filed by the Clerk, a certified copy of which proceedings shall be sufficient proof of the death of the prisoner, at the hearing of an application under habeas corpus.

ART. 156. Whenever the District Attorney of the proper district is in the county where a cause is heard under habeas corpus, it is his duty, if the defendant is accused of a felony, to be present at the hearing, and represent the State ; for which service he shall be paid the fee allowed by law. And if the District Attorney is not present at the hearing of such cause, the Judge shall appoint some well qualified practising attorney to represent the State, who shall be paid the same fee as is allowed District Attorneys for like services.

ART. 157. The Judge or Court before whom a person is brought by writ of habeas corpus, shall examine the writ and the papers attached to it, and if no legal cause be shown for the imprisonment or restraint, or if it appear that the imprisonment or restraint, though at first legal, cannot, for any cause, be lawfully prolonged, the applicant shall be discharged.

ART. 158. If it appear by the return and papers attached, that the party stands indicted for a capital offence, the Judge or Court shall nevertheless proceed to hear such testimony as may be offered, on the part both of the applicant and the State, and may either remand the defendant or admit him to bail, as the law and the facts of the case may justify.

ART. 159. In all cases where no indictment has been found, it shall not be deemed that any presumption of guilt has aris-

sen from the mere fact that a criminal accusation has been made before a competent authority.

ART. 160. The Judge or Court after having examined the return and all documents attached, and heard the testimony offered on both sides, shall, according to the facts and circumstances of the case, proceed either to remand the party into custody, admit him to bail, or discharge him: provided that no defendant shall be discharged after indictment, without bail.

ART. 161. If it shall appear that the applicant is detained or held under a warrant of commitment which is informal or void, yet, if from the document on which the warrant was based, or from the proof on the hearing of the habeas corpus, it appear that there is probable cause to believe that an offence has been committed by the prisoner, he shall not be discharged, but shall be committed or held to bail by the Court or Judge trying the application under habeas corpus.

ART. 162. Where, upon an examination under habeas corpus, it shall appear to the Court or Judge that there is probable cause to believe that an offence has been committed by the prisoner, he shall not be discharged, but shall be committed, or admitted to bail, according to the facts and circumstances of the case.

ART. 163: For the purpose of ascertaining the grounds on which an informal or void warrant has been issued, the Judge or Court may cause to be summoned the Magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such Magistrate, and the production of such papers, may be enforced by warrant of arrest, if necessary.

ART. 164. It shall not be necessary, on the trial of any cause arising under habeas corpus, to make up a written issue, though it may be done by the applicant for the writ. He may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance. If written denial on his part be not made, it shall be considered, for the purpose of investigation, that the statements of said re-

turn are contested by a denial of the same, and proof shall be heard accordingly, both for and against the applicant for relief.

ART. 165. The applicant shall have the right to open and conclude, by himself or counsel, the argument upon the trial under habeas corpus.

ART. 166. The Court or Judge, trying a cause under habeas corpus, may make such order as is deemed advisable or right, concerning the cost of bringing the defendant before him, and all other costs of the proceedings, awarding the same either against the person to whom the writ was directed, the person seeking relief, or may award no costs at all.

ART. 167. If a writ of habeas corpus be made returnable before a Court in session, all the proceedings had shall be entered of record by the Clerk thereof, as would be done in any other case pending in such Court; and when the application is heard out of the county where the offence was committed, or in the Supreme Court, the Clerk shall transmit a certified copy of all the proceedings upon the application to the Clerk of the District Court of the county where the offence was committed or is triable.

ART. 168. If the return is made and the proceedings had before a Judge of a Court in vacation, he shall cause all the proceedings to be taken down, shall certify to the same, and cause them to be filed with the Clerk of the District Court of the county where the offence was committed or is triable, whose duty it shall be to keep them safely.

ART. 169. The provisions of the two preceding Articles refer only to cases where an applicant is held under accusation for some offence; in all other cases, the proceedings had before the Judge shall be filed and kept by the Clerk of the District Court of the county where the application is heard.

ART. 170. The Court or Judge granting a writ of habeas corpus may grant all necessary orders to bring before him the testimony taken before the examining Court, and may issue all process for enforcing the attendance of witnesses,

which is allowed in any other proceedings in a criminal action.

ART. 171. The word "Return," as used in Articles 144 and 145, refers to and means the report made by the officer or person charged with serving the writ of habeas corpus ; and the same word as used in other Articles of this Chapter, means the answer made by the person accused of having another illegally in custody or under restraint, setting forth the cause for which he holds such other person in custody or under restraint.

§ IV.

General Provisions.

ARTICLE 172. Where a person, before indictment found against him, has been discharged or held to bail on habeas corpus, by order of a Court or Judge of competent jurisdiction, he shall not be again imprisoned or detained in custody on an accusation for the same offence until after he shall have been indicted, unless delivered up by his bail in order to release themselves from their liability.

ART. 173. Where a person once discharged or admitted to bail is afterwards indicted for the same offence for which he has been once indicted, he may be committed upon the indictment, but shall be again entitled to the writ of habeas corpus, and may, notwithstanding the indictment, be admitted to bail, if the facts of the case render it proper ; but in cases where, after indictment found, the cause of the defendant has been investigated on habeas corpus and an order made, either remanding him to custody, or admitting him to bail, he shall neither be subject to be again placed in custody, unless when surrendered by his bail, or when the trial of his cause commences before a petit jury, nor shall he be again entitled to the writ of habeas corpus, except in the special cases mentioned in Article 175.

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ART. 174. If the accusation against the defendant for a capital offence has been heard on habeas corpus before indict-

ment found, and he shall have been committed after such examination, he shall not be entitled to the writ unless in the special cases mentioned in the next Article.

ART. 175. A party may obtain the writ of habeas corpus a second time, by stating in the application therefor that since the hearing of his first application important testimony has been obtained, which it was not in his power to produce at the former hearing. He shall also set forth the testimony so newly discovered, and if it be that of a witness, the affidavit of the witness shall also accompany such second application.

ART. 176. The preceding Article shall not apply where there has been an appeal to the Supreme Court from the decision of a District Court or Judge upon the first application.

ART. 177. Any officer to whom a writ of habeas corpus or other writ, warrant or process, authorized by this Chapter, shall be directed, delivered or tendered, who shall refuse to execute the same according to its directions, or who shall wantonly delay the service or execution of the same, is guilty of an offence, and shall be punished according to the provisions of the Penal Code; he shall also be liable to fine as for contempt of Court.

ART. 178. Any one having another in his custody, or under his power, control or restraint, who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of another, removes him, or in any other manner attempts to evade the operation of the writ, is guilty of a penal offence, and shall be punished as provided in the Penal Code.

ART. 179. Any Jailor, Sheriff, or other officer, who has a prisoner in his custody, and refuses upon demand to furnish a copy of the process under which he holds the person, is guilty of an offence.

ART. 180. No person shall be discharged under the writ of habeas corpus, who is in custody by virtue of a commitment for any offence exclusively cognizable by the Courts of the United States, or by order or process issuing out of such

Courts in cases where they have jurisdiction, or who is held by virtue of any *legal* engagement or enlistment in the army, or who being *rightfully* subject to the rules and articles of war is confined by any one *legally* acting under the authority thereof, or who is held as a prisoner of war under the authority of the United States.

ART. 181. This Chapter applies to all cases of habeas corpus for the enlargement of persons illegally held in custody, or in any manner restrained of their personal liberty ; for the admission of prisoners to bail ; and for the discharge of prisoners before indictment, upon a hearing of the testimony. Instead of the writ of habeas corpus in other cases where heretofore used, a simple order shall be substituted.

C. C. 185.7.1

PART III.

OF PROCEEDINGS IN CRIMINAL ACTIONS, PROSECUTED BY INDICTMENT OR INFORMATION IN THE DISTRICT COURTS.

TITLE I.

THE TIME AND PLACE OF COMMENCING AND PROSECUTING CRIMINAL ACTIONS.

CHAPTER I.

The time within which Criminal Actions may be commenced.

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VII. 281
ARTICLE 182. An indictment for murder or forgery may be presented within ten years from the time of the commission of the offence, and not afterwards.

ART. 183. An indictment for theft punishable as a felony, arson, burglary, robbery and counterfeiting, may be presented within five years, and not afterwards.

ART. 184. An indictment for the offence of rape may be presented within one year, and not afterwards.

anno d.
VII. 281
ART. 185. An indictment for all other felonies may be presented within three years from the commission of the offence, and not afterwards.

ART. 186. For all misdemeanors an indictment or information may be presented within two years from the commission

of the offence, and not afterwards; except misdemeanors which Justices' Courts have concurrent jurisdiction to try, in which cases the indictment may be presented within one year, and not afterwards.

ART. 187. The time during which a person accused of an offence is absent from the State shall not be computed in the period of limitation.

ART. 188. An indictment is to be considered as "presented" when it has been duly acted upon by the grand jury and received by the Court.

ART. 189. An information is to be considered as presented when it has been filed by the proper officer in the proper court.

CHAPTER II.

OF THE COUNTY WITHIN WHICH OFFENCES MAY BE PROSECUTED.

ARTICLE 190. Prosecutions for offences committed wholly or in part without, and made punishable by law within this State, may be commenced and carried on in any county in which the offender is found.

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ART. 191. An offence committed on the boundary of any two counties, or within four hundred yards thereof, may be prosecuted and punished in either county, and the indictment or information may allege the offence to have been committed in the county where it is prosecuted.

ART. 192. If any person, being at the time within this State, shall inflict upon another, also within the State, an injury of which such person afterwards dies without the limits of this State, the person so offending shall be liable to prosecution in the county where the injury was inflicted.

ART. 193. If a person, being at the time within this State, shall inflict upon another out of this State, an injury by reason of which the injured person dies without the limits of this State, he may be prosecuted in the county where he was when the injury was inflicted.

ART. 194. If a person being at the time without the limits of this State, shall inflict upon another who is at the time within this State, an injury causing death, he may be prosecuted in the county where the person injured dies.

ART. 195. If an offence be committed upon any river or stream, the boundary of this State, it may be prosecuted in the county the boundary of which is upon such stream or river, and the county seat of which is nearest the place where the offence was committed.

ART. 196. If a person receive an injury in one county and die in another by reason of such injury, the offender may be prosecuted in the county where the injury was received or where the death occurred.

ART. 197. Where a river or other stream or highway is the boundary between two counties, any offence committed on such river, stream or highway, at a place where it is such boundary, is punishable in either county, and it may be alleged in the information or indictment that the offence was committed in the county where it is prosecuted.

ART. 198. Where property is stolen in one county and carried off by the offender to another, he may be prosecuted either in the county where he took the property or in any county where he may be found with it.

ART. 199. A citizen of this State who fights a duel with deadly weapons out of this State, or who sends or accepts a challenge to fight a duel with deadly weapons out of this State, or who acts as second, or knowingly aids and assists any other person engaged in a duel, may be prosecuted in any county of this State where he may be found.

ART. 200. Offences committed out of this State by a commissioner of deeds, or other officer acting under the authority of this State, may be prosecuted in any county of this State.

ART. 201. Where an offence is committed on board a vessel which is at the time upon any navigable water within the boundaries of this State, the jurisdiction for the prosecution of the offence is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage commences or terminates.

ART. 202. The offence of bringing into this State a slave that has been convicted in another State of an offence which is capital by the laws of this State, may be prosecuted in any county where the offender may be found, or into which he may have brought such slave.

ART. 203. The offence of embezzlement may be prosecuted in any county in which the offender may have taken or received the property, or through or into which he may have undertaken to transport it.

ART. 204. The jurisdiction for the prosecution of the following offences : VII. 231

1. Forcible seizure and imprisonment.
2. Kidnapping.
3. Enticing away an unmarried female under the age of twenty-one years, for the purpose of prostitution, belongs either to the county in which the offence was committed, or to any county through, into or out of which the person kidnapped or enticed away may have been carried.

ART. 205. When an act has been committed out of this State by an inhabitant thereof, and such act is an offence by the laws of this State, and is also an offence by the laws of the place where the same was done, a conviction or acquittal of the offender, under the laws of the place where the offence was committed, is a bar to the prosecution in this State. Where the escape of a prisoner occurs, the Sheriff or other person having lawful custody of him may be prosecuted therefor, either in the county where the escape has or may occur, or in the county where the prisoner was under prosecution or trial for the offence.

ART. 206. Where different counties have jurisdiction of the same offence, a conviction or acquittal of the offence in one county is a bar to any further prosecution in any other county.

~~and~~ ART. 207. In all the cases mentioned in the foregoing
~~ART. 207.~~ Articles of this Title, the indictment or information, or any proceeding in the case, may allege that the offence was committed in the county where the prosecution is carried on.

ART. 208. In all cases except those enumerated in previous Articles of this Chapter, the proper county for the prosecution of offences is that in which the offence was committed.

TITLE II.

OF ARREST, COMMITMENT AND BAIL.

CHAPTER I.

OF ARREST WITHOUT WARRANT.

ARTICLE 209. A peace officer, or any other person, may, without warrant, arrest an offender, when the offence is committed in his presence or within his view, if the offence is one classed as a felony or as an "offence against the public peace."

ART. 210. A peace officer may arrest without warrant when a felony or breach of the peace has been committed in the presence or within the view of a Magistrate, and such Magistrate shall verbally order the arrest of the offender.

ART. 211. The municipal authorities of towns and cities may establish rules authorizing the arrest without warrant, of persons found in suspicious places and under circumstances

which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offence against the laws.

ART. 212. Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed and that the offender is about to escape, so that there is no time to procure a warrant, such peace officer may, without warrant, pursue and arrest the person accused.

ART. 213. In all the cases enumerated where arrests may be lawfully made without warrant, the officer or other person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant, as provided in this Code.

ART. 214. In all the cases enumerated in this Chapter, the person making the arrest shall immediately take the person arrested before the Magistrate who may have ordered the arrest, or before the nearest Magistrate where the arrest was made, without an order.

CHAPTER II.

OF ARREST UNDER WARRANT.

ARTICLE 215. A warrant of arrest is a written order directed to a peace officer, or some other person specially named, commanding him to take the body of the person accused of an offence, to be dealt with according to law.

ART. 216. It issues in the name of "The State of Texas," and shall be deemed sufficient, without regard to form, if it have these substantial requisites :

1. It must specify the name of the person whose arrest is

ordered, if it be known ; if not known, then some reasonably definite description must be given of him.

2. It must state that the person is accused of some offence against the laws of the State, naming the offence.

3. It must be signed by the Magistrate, and his office be named in the body of the warrant, or in connection with his signature.

4. It may be directed to "any peace officer," or private person, by name.

ART. 217. Magistrates may issue warrants of arrest in all cases in which they are, by law, authorized to order verbally the arrest of offenders.

ART. 218. Magistrates may issue warrants of arrest, also, in the following cases :

1. When any person shall make oath before such Magistrate that another has committed some offence against the laws of the State.

2. In other cases named in this Code where they are specially authorized to issue such warrants.

ART. 219. The affidavit made before the Magistrate, which charges the commission of an offence, is called a *complaint*.

ART. 220. The complaint shall be reduced to writing, and signed by the person making it, if he is able to write his name, otherwise he may place his mark at the foot of the complaint.

ART. 221. A warrant of arrest issued by a Judge of the Supreme or District Court shall extend to every part of the State.

ART. 222. A warrant of arrest may be directed to "any peace officer," but when issued by a Magistrate other than a Supreme or District Judge, if the offender escape from the county where the offence was committed, the warrant may be made effectual in any county of the State by procuring the endorsement of the same by a Magistrate of such county. The endorsement may be in these words, "Let this warrant be executed in the county of _____," signed by the Magistrate, with the name of his office. Any other words expressing the

same meaning will be sufficient. A District or Supreme-Judge may, by endorsement of a warrant, authorize it to be executed in any part of the State.

ART. 223. In cases where it is made known by satisfactory proof to the Magistrate, that a peace officer cannot be procured to execute a warrant of arrest, or that so much delay will be occasioned in procuring the services of a peace officer that a person accused will probably escape, the warrant of arrest may be directed to any suitable person who is willing to execute the same, and in such case his name shall be set forth in the warrant.

ART. 224. No person other than a peace officer can be compelled to execute a warrant of arrest, but if any person shall undertake the execution of the warrant he shall be bound to do so under all the penalties to which a peace officer would be liable. He has the same rights and is governed by the same rules as are prescribed to peace officers.

ART. 225. The officer or person executing a warrant of arrest, shall take the person whom he is directed to arrest, forthwith, before the Magistrate who issued the warrant, unless he is directed in the warrant to take such person before some other Magistrate.

ART. 226. If any person be arrested in one county for felony committed in another, he shall in all cases be taken before some Magistrate of the county where it is alleged the offence was committed; but if the arrest be for a misdemeanor, he shall be taken before a Magistrate of the county where the arrest takes place, who shall be authorised to take bail, and whose duty it shall be to transmit immediately the bond so taken to the Clerk of the District Court of the county in which the offence was committed.

ART. 227. A person is said to be arrested when he has been actually placed under restraint, or taken into custody by the officer or person executing the warrant of arrest.

ART. 228. An arrest may be made on any day or at any time of the day or night.

ART. 229. In making an arrest all reasonable means are

permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused.

ART. 230. In cases of felony the officer may break down the door of any house for the purpose of effecting an arrest, if he be refused admittance after giving notice of his authority and purpose.

ART. 231. In executing a warrant of arrest it shall always be made known to the person accused, under what authority the arrest is made, and, if requested, the warrant shall be exhibited.

ART. 232. If a person arrested shall escape or be rescued, he may be re-taken without any other warrant; and for the purpose of re-taking the person so escaping or rescued, all the means may be used which are authorized in making the arrest in the first instance.

CHAPTER III.

OF THE COMMITMENT OR DISCHARGE OF THE ACCUSED.

ARTICLE 233. When a person accused of an offence has been brought before a Magistrate, that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure the aid of counsel.

ART. 234. The Magistrate may, at the request of the prosecutor or person representing the State, or of the defendant, postpone, for a reasonable time, the examination, so as to afford an opportunity to procure testimony; but the accused shall in the meanwhile be detained in the custody of the Sheriff or other duly authorized officer.

*amend.
77.232*

ART. 235. Before the accused has made any voluntary statement, the witnesses, both for and against him, shall be sworn and examined. But the Magistrate shall, if requested by the accused or his counsel, or by the person prosecuting, have all the witnesses placed in charge of an officer, except the witness who is testifying, so that the testimony given by any one witness shall not be heard by any of the others.

ART. 236. If any person appear to prosecute as counsel for the State, he shall have the right to put the questions to the witnesses on the direct or cross-examination, and the accused or his counsel has the same right.

ART. 237. Should no counsel appear either for the State or for the defendant, the Magistrate may examine the witnesses, and the accused has the same right; but in all cases of felony, where the District Attorney is in the county where the prosecution is being conducted, he shall be notified by the Magistrate, and it is his duty to be present and represent the State.

amend.
W. 232

ART. 238. The testimony of all the witnesses shall be reduced to writing, signed by them with their names or marks; and all the testimony thus taken shall be certified to by the Magistrate.

ART. 239. After examining the witnesses in attendance, if it satisfactorily appear to the Magistrate that there is other important testimony which may be had by a postponement of the examination, he shall, at the request of the prosecutor or of the defendant, postpone the further examination for a reasonable time, to enable such testimony to be procured; but in such case the accused shall remain in the custody of the proper officer until the day fixed for such further examination. No postponement shall take place unless a statement on oath be made by the defendant or the person prosecuting, setting forth the name and residence of the witness, and the facts which it is expected will be proved; or if it be testimony other than that of a witness, the statement made shall set forth the nature of the evidence.

ART. 240. The examination of the witnesses shall be in the presence of the accused.

amend.
VII. 232 ART. 241. After the examination of the witnesses has been concluded, the Magistrate shall inform the defendant that it is his right to make a statement relative to the accusation brought against him, but shall, at the same time, also inform him that he cannot be compelled to make any statement whatever.

ART. 242. If the accused shall desire to make a voluntary statement, the same shall be reduced to writing by the Magistrate or some one under his direction, and shall be signed by the accused. Where the accused prefers to write out altogether his statement, he is at liberty to do so, and of this he shall be informed by the Magistrate; should the accused be unable to write, he may affix his mark to the statement.

ART. 243. The Magistrate shall in every case attest, by his own certificate and signature, the execution and signing of the statement.

ART. 244. The Magistrate has the power to issue an attachment for the purpose of enforcing the attendance of a witness; and this he may do without having previously issued a subpoena for that purpose.

ART. 245. The officer to whom the attachment is issued shall execute it forthwith, by bringing before the Magistrate the witness named.

ART. 246. Witnesses may be brought by attachment before the examining Magistrate, from any county, in case of felony, and it shall not be necessary to tender the expenses of such witnesses, but no attachment shall issue to a county other than that where the prosecution is being conducted, unless oath be made by the party applying for the process that the presence of the witness is material and his testimony important for the prosecution or defence, as the case may be; and the affidavit shall further set forth the facts which it is expected will be proved by the witness. An examination may be postponed a reasonable time for the purpose of bringing in a witness.

amend.
VII. 232 ART. 247. Any person accused of an offence, whether capital or of less grade, shall be discharged if it do not appear that an offence has been committed, or that there is probable

cause to believe the defendant guilty thereof, under the restrictions, however, prescribed in the succeeding Article.

ART. 248. Upon examination of a person accused of a capital offence, no Magistrate, other than a Judge of the Supreme or District Court, or Chief Justice of a county, shall have power to discharge the defendant. Any Magistrate may admit to bail, unless in capital cases where the proof is evident or the presumption great.

ART. 249. Where it is made to appear by complaint on oath to a Judge of the Supreme or District Court, or Chief Justice of a county, that the bail taken in any case is insufficient in amount, such Judge or Chief Justice shall issue a warrant of arrest, and require of the defendant additional security, according to the nature of the case.

ART. 250. After the examination of the witnesses has been fully completed, and the voluntary statement of the accused, if any, taken, the Magistrate shall proceed to make an order committing the defendant to the jail of the proper county, if there be one, discharging him, or admitting him to bail, as the law and facts of the case may require.

ART. 251. Where there is no safe jail in the county in which the prosecution is carried on, the Magistrate may commit to the nearest safe jail of any other county.

ART. 252. The warrant of commitment in the case mentioned in the preceding Article shall be directed to the Sheriff of the county to which the defendant is sent, but the Sheriff of the county from which the defendant is taken, shall be required to deliver the prisoner into the hands of the Sheriff of the county to which he is sent.

ART. 253. A warrant of commitment is an order, signed by the proper Magistrate, directing a Sheriff to receive and place in jail the person so committed. It will be sufficient if it have the following requisites :

1. That it run in the name of "The State of Texas."
2. That it be addressed to the Sheriff of the county, to the jail of which the defendant is committed.

3. That it state, in plain language, the offence for which the defendant is committed, and give his name, if it be known, or if unknown, contain an accurate description of the defendant.
4. That it state to what Court, and at what time, the defendant is to be held to answer.
5. When the prisoner is sent out of the county where the prosecution arose, the warrant shall state that there is no safe jail in the proper county.

ART. 254. In every case where, for want of a safe jail in the proper county, a prisoner is committed to the jail of another county, the last named county shall have the right to recover, by civil action, in a Court of competent jurisdiction, of the county from which the prisoner was sent, an amount of money not exceeding seventy-five cents per day, on account of the expenses attending the custody and safe keeping of a prisoner.

ART. 255. It is the duty of every Sheriff to keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end, but shall adopt all necessary measures to prevent the escape of a prisoner. He may summon a guard of sufficient number, in case it become necessary, to prevent an escape from jail or the rescue of a prisoner.

ART. 256. A discharge by a Magistrate upon an examination of any person accused of an offence shall not prevent a second arrest of the same person for the same offence.

CHAPTER IV.

OF BAIL.

§ I.

General Rules Applicable to all Cases of Bail.

ARTICLE 257. Bail is the security given by a person accused of an offence that he will appear and answer before the proper Court, the accusation brought against him.

ART. 258. This security is given by means of a recognizance, or a bail bond.

ART. 259. A recognizance is an undertaking entered into before the Supreme or District Court by the defendant to a criminal action and his sureties, by which they bind themselves respectively, in a sum fixed by the Court, that the defendant will appear for trial before the proper Court upon the accusation preferred against him. The undertaking of the parties, in such case, is not signed, but made a matter of record in the Court where the same is entered into.

ART. 260. A bail bond is an undertaking entered into by the defendant and his sureties for the same purpose as a recognizance ; it is written out, and signed by the defendant and his sureties.

ART. 261. A bail bond is entered into, either before a Magistrate, upon an examination of a criminal accusation against a defendant, as provided in Chapter III of this Title, or before a Judge, upon an application under habeas corpus ; or it is taken from the defendant by a peace officer who has a warrant of arrest or of commitment, as hereafter provided.

ART. 262. Wherever the word bail is used with reference to the security given by the defendant, it is intended to apply as well to recognizances as to bail bonds.

When a defendant is said to be "on bail," or to have "given

bail," it is intended to apply as well to recognizances as to bail bonds.

~~amend:~~ ART. 263. A recognizance shall be sufficient to bind the principal and sureties, if it contain the following requisites.

~~IV. 232~~ 1. That it be acknowledged that the defendant is indebted to the State of Texas in such sum as is fixed by the Court, and that the sureties are in like manner indebted in such sum as is fixed by the Court.

2. That it state, distinctly, the accusation against the defendant.

3. That it appear by the recognizance that the defendant is accused of an offence against the laws of this State.

4. That the time and place, when and where the defendant is bound to appear, be stated, and the Court before which he is bound to appear.

~~amend:~~ ART. 264. A bail bond shall be sufficient, if it contain the following requisites :

~~IV. 233~~ 1. That it be made payable to the State of Texas.

2. That the obligors thereto bind themselves that the defendant will appear before the proper Court to answer the accusation against him.

3. That the offence of which the defendant is accused be distinctly stated in the bond, and that it appear therefrom that he is accused of some offence against the laws of the State.

4. That the bond be signed by the principal and sureties, or in case all or either of them cannot write, then that they affix thereto their marks.

5. That the bond state the time and place, when and where the accused binds himself to appear, and the Court before which he is to appear. In stating the time, it is sufficient to specify the term of the Court ; and in stating the place, it is sufficient to specify the name of the Court and of the county.

ART. 265. The rules laid down in this Chapter respecting recognizances and bail bonds are applicable to all such undertakings when entered into in the course of a criminal action, whether before or after indictment or information, in every case where authority is given to any Court, Judge, Magistrate, or other officer, to require bail of a person accused of an offence, or of a witness in a criminal action.

ART. 266. The manner of recovering, in behalf of the State, the amount of such recognizances and bonds, is laid down in Part III, of this code, Title IV, Chapter IV.

ART. 267. A recognizance or bail bond, entered into by a defendant, and which binds him to appear at a particular term of the District Court, shall be construed to bind him and his sureties, for his attendance upon the Court from term to term, and from day to day, until his final acquittal or conviction and sentence.

ART. 268. A minor or married woman, cannot be surety on a recognizance or bail bond, but if either of these classes of persons be the accused party, the undertaking shall be binding both upon principal and surety.

ART. 269. It is the duty of every Court, Judge, Magistrate, or other officer, taking bail, to require evidence of the sufficiency of the security offered; but in every case one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution, and of debts or other incumbrances; that he is a resident of this State, and has property therein liable to execution, worth the sum for which he is bound.

ART. 270. The property secured by the Constitution and laws from forced sale, shall not in any case be held liable for the satisfaction of a recognizance or bail bond, either as to the principal or sureties.

ART. 271. In order to test the sufficiency of the security offered to any recognizance or bail bond, unless the Court or officer taking the same is fully satisfied as to the sufficiency of the security, the following oath shall be made in writing, and subscribed by the surety "I, A. B. do swear (or affirm as the case may be) that I am worth in my own right, at least the sum of [here insert the amount in which the surety is bound] after deducting from my property all that which is exempt by the Constitution and Laws of the State, from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances upon my property which are known to me; that I reside in _____ county, and have property in this State liable

to execution, worth [amount for which he offers to be bound] or more.

Dated —— and attested by the [Signed by the surety]
 Judge of the Court, Clerk, {
 Magistrate, or Sheriff, }
 which affidavit shall be filed with the papers of the cause, or
 criminal proceeding.

ART. 272. The amount of bail, to be required in any case, is to be regulated by the Court, Judge, Magistrate, or officer, taking the bail; they are to be governed in the exercise of this discretion by the Constitution of this State, and by the following rules :

1. The bail shall be sufficiently high, to give reasonable assurance that the undertaking will be complied with.
 2. The power to require bail is not to be used in such manner as to make it an instrument of oppression.
 3. The nature of the offence, and the circumstances under which it was committed, are to be considered.
 4. The pecuniary circumstances of the accused are to be regarded, and proof may be taken upon this point.
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§ II.

Surrender of the Principal by his Bail.

ARTICLE 273. Those who have become bail for the accused or either of them, may at any time relieve themselves of their undertaking, by surrendering the accused into the custody of the Sheriff of the county where he is prosecuted.

ART. 274. Should a surrender of the accused be made during a term of the Court to which he has bound himself to appear, the Sheriff shall take him before the Court; and if he is willing to give other bail, the Court shall forthwith require him to enter into recognizance. Any surety desiring to surrender the accused may, upon making a written affidavit of such intention, obtain a warrant for his arrest, which shall be executed as in other cases.

ART. 275. If the surrender be made while the Court is not in session, the Sheriff may himself take the necessary bail bond.

ART. 276. If the accused fail, or refuse to give bail, in case of a surrender, during a term of the Court, the Court shall make an order that he be committed to Jail until the bail be given ; and this shall be a sufficient commitment, without any written order or warrant to the Sheriff.

ART. 277. Where the surrender is made at any other time than during the session of the Court, and the defendant refuses to give other bail, the Sheriff shall take him before the nearest Magistrate, and such Magistrate shall issue a warrant of commitment, reciting the fact that the accused has been once admitted to bail, has been surrendered and now refuses to give other bail.

ART. 278. The rules laid down in Chapter three, of this Title, with respect to the sending of an accused person to the Jail of another county, shall also apply to cases where the party has been surrendered by his bail.

ART. 279. The Sheriff, in cases of misdemeanor, has authority, at all times, whether during the term of the Court, or in vacation, where he has a defendant in custody under a warrant of commitment, or where the accused has been surrendered by his bail, to take of the defendant other bail.

ART. 280. In cases of felony, the Sheriff cannot, during the term of the Court, take the bail, but must bring the accused before the Court, that he may there enter into recognizance.

ART. 281. Sureties shall in all cases be severally bound, and when a surrender of the defendant is made by one or more of them, those making the surrender shall be considered discharged, and the others held bound ; and in such cases, the defendant shall be required to give other security in place of the persons so discharged.

ART. 282. The recognizance or bail bond, shall be as valid against the sureties still held bound, under the preceding Article, as if no surrender had been made.

ART. 283. The provisions of the two preceding Articles apply to all bonds authorized to be taken for the purpose of preventing the commission of offences, and the preservation of the peace.

§ III.

Bail before the Examining Court.

ARTICLE 284. The rules laid down in the preceding Articles of this Chapter, relating to the amount of the bail—the number of sureties—the person who may be surety—the property which is exempt from liability—the form of bail bonds—the responsibility of parties to the same—and all other rules in this Chapter of a general nature, are applicable to bail taken before an examining Court.

ART. 285. After a full examination of the testimony, the Magistrate shall, if the case be one where bail may properly be granted and ought to be required, proceed to make an order that the accused execute a bail bond with sufficient security, conditioned for his appearance at the next term of the District Court for the proper county.

ART. 286. All persons, accused of offences, less than capital, are entitled to bail as a matter of right.

ART. 287. In capital cases *where the proof is evident or the presumption great*, bail cannot be allowed.

ART. 288. In making the order, admitting to bail, the Magistrate shall fix the amount of the sum, in which the accused and his sureties shall be respectively bound.

ART. 289. Reasonable time shall be given the accused to procure security.

ART. 290. If, after the allowance of reasonable time, the security be not offered, the Magistrate shall make an order committing the accused to jail, to be there kept safely until

the required bail be given, and he shall issue a warrant of commitment, directed to the Sheriff of the county in which the prosecution is pending, or in cases provided for in Articles 251 and 278 to the Sheriff of some other county, which warrant of commitment shall, however, set forth that the defendant is entitled to be released upon giving bail to the Sheriff in whose custody he may be, in the amount fixed by such Magistrate,

ART. 291. If the party accused be ready to give bail, the Magistrate shall prepare, or cause to be prepared, a bail bond, which shall be signed by the accused and his surety, the Magistrate first enquiring into the sufficiency of the security offered, and requiring one or more sureties according to the wish of the accused or the solvency of the sureties offered.

ART. 292. There is no particular form for a bail bond, but it must contain the substantial requisites prescribed in the preceding part of this Chapter.

ART. 293. The accused is to be set at liberty so soon as he has complied with the order of the Magistrate, by giving the bail required.

ART. 294. Where a defendant is committed for failing to give bail, he shall be discharged by the officer in whose custody he is, upon executing the proper bail bond. The officer to whose charge he is committed having the right, in all such cases, to take the bond.

ART. 295. The Magistrate before whom an examination has taken place, upon a criminal accusation, shall certify to all the proceedings had before him, and transmit them, sealed up, to the Court before which the defendant is subject to be tried upon indictment or information, writing his name across the seals of the envelop containing the proceedings. The voluntary statement of the defendant—the testimony of the witnesses—bail bonds, and all and every other proceeding in the case, shall be thus delivered to the Clerk of the District Court.

ART. 296. It is the duty of a Magistrate, as well where a party has been discharged as where he has been held to bail

or committed, to cause the proceedings before him to be certified and delivered to the District Court ; and he shall, likewise, where a complaint has been made to him of the commission of an offence, and there has been a failure from any cause to arrest the accused, file with the proper Clerk the warrant of arrest and complaint.

§ IV.

Bail by Witnesses.

ARTICLE 297. Witnesses on behalf of the State or defendant, may be required by the Magistrate, upon the examination of any criminal accusation before him, to give bail for their appearance to testify before the District Court ; and if a witness make oath that he is unable to give security, or deposit a sufficient amount of money in lieu thereof; then his individual bond shall be taken, and shall have the same force and effect against him as a bail bond.

ART. 298. The amount of security, to be required of a witness, is to be regulated by his pecuniary condition, and the nature of the offence with respect to which he is a witness.

ART. 299. Bonds given by witnesses may be forfeited and recovered upon in the manner pointed out in Part III. Title IV, Chapter IV. §II, of this Code.

TITLE III.

OF SEARCH WARRANTS.

CHAPTER I.

GENERAL RULES.

ARTICLE 300. A search warrant is a written order, issued by a Magistrate and directed to a peace officer, commanding him to search for personal property, and to seize the same and bring it before such Magistrate ; or it is a like written order, commanding a peace officer to search a suspected place where it is alleged stolen property is commonly concealed, or implements kept for the purpose of being used in the commission of any designated offence.

ART. 301. A search warrant may be issued for the following purposes and no others :

1. To discover property acquired by theft, or in any other manner which makes its acquisition a penal offence.
2. To search suspected places, where it is alleged property so illegally acquired is commonly kept or concealed.
3. To search places, where it is alleged implements are kept for the purpose of being used in forging or counterfeiting.
4. To search places, where it is alleged arms or munitions are kept or prepared for the purpose of insurrection or riot.
5. To seize and bring before a Magistrate any such property, implements, arms or munitions.

ART. 302. A warrant to search for and seize stolen property is designed as a means of obtaining possession of the

property, for the purpose of restoring it to the true owner, and detecting any person guilty of the theft or concealment of the same.

ART. 303. The word "stolen," as used in this Title, is intended to embrace also the acquisition of property by any means forbidden and made penal by the law of the State.

ART. 304. When it is alleged that the property, to search for which a warrant is asked, was acquired in any other manner than by theft, the particular manner of its acquisition must be set forth in the complaint and in the warrant.

ART. 305. The mode of proceeding, directed to be pursued in applying for a warrant, to search for and seize *stolen* property, and the rules prescribed for officers in issuing such warrants, and executing the same, the disposition of the property seized, and all other rules herein prescribed on the subject, shall apply and be pursued, when the property to be searched for was acquired in any manner in violation of the provisions of the Penal Code.

CHAPTER II.

WHEN AND HOW A SEARCH WARRANT MAY BE ISSUED.

ARTICLE 306. A warrant to search for and seize property alleged to be stolen and concealed at a particular place, may be issued by a Magistrate whenever complaint in writing and on oath is made to such Magistrate, setting forth—

1. The name of the person accused of having stolen or concealed the property, or if his name be unknown, giving a description of the accused; or stating that the person who stole or concealed the property is unknown.

2. The kind of property and its probable value, alleged to be stolen or concealed.

3. The place where the property is alleged to be concealed.

4. The time, as near as may be, when the property is alleged to have been stolen.

ART. 307. A warrant to discover and seize property alleged to have been stolen, or otherwise acquired in violation of the penal law, but not alleged to be concealed at any particular place, may be issued whenever complaint is made in writing and on oath, setting forth—

1. The name of the person suspected of being the thief, or an accurate description of him if his name be unknown, or that the thief is unknown.

2. An accurate description of the property, and its probable value.

3. The time, as near as may be, when the property is supposed to have been stolen.

4. That the person complaining has good ground to believe that the property was stolen by the person alleged to be the thief.

ART. 308. A warrant to search any place suspected to be one where stolen goods are commonly concealed, or where implements are kept, for the purpose of aiding in the commission of offences, may be issued by a Magistrate when complaint is made in writing and on oath, setting forth—

1. A description of the place suspected.

2. A description of the kind of property alleged to be commonly concealed at such place, or the kind of implements kept.

3. The name, if known, of the person supposed to have charge of such place, when it is alleged that it is under the charge of any one.

4. When it is alleged that implements are kept at a place for the purpose of aiding in the commission of offences, the particular offence for which such implements are designed, must be set forth.

ART. 309. The Magistrate, at the time of issuing a search warrant, may also issue a warrant for the arrest of the person accused of having stolen the property, or of having concealed the same, or of having in his possession or charge, property concealed at a suspected place, or of having possession

of implements designed for use in the commission of the offence of forgery or counterfeiting, or of having the charge of arms or munitions prepared for the purpose of insurrection, or of having prepared such arms or munitions, or who may be in any legal manner accused of being accomplice or accessory to any of the offences above enumerated.

ART. 310. The search warrant may, in addition to commanding the peace officer to seize property, also require him to bring before the Magistrate the person accused of having stolen or concealed the property.

ART. 311. A search warrant to seize property stolen and concealed, shall be deemed sufficient if it contain the following requisites :

1. That it run in the name of "The State of Texas."
2. That it be directed to the Sheriff of the proper county.
3. That it describe the property alleged to be stolen or concealed, and the place where it is alleged to be concealed, and order the same to be brought before the Magistrate.
4. That it name the person accused of having stolen or concealed the property, or if his name be unknown, that it describe him with accuracy, and direct the officer to bring such person before the Magistrate, or state that the person who stole or concealed the property is unknown.
5. That it be dated and signed by the Magistrate.

ART. 312. A warrant to search a suspected place shall be deemed sufficient if it contain the following requisites :

1. That it run in the name of "The State of Texas."
2. That it describe with accuracy the place suspected.
3. That it describe, as near as may be, the property supposed to be commonly concealed in such suspected place, or the implements alleged to be there kept for the purpose of aiding in the commission of offences, and state the particular offence for which such implements are designed.
4. That it name the person accused of having charge of the suspected place, if there be any such person, or if his name is unknown, that it describe him with accuracy and direct him to be brought before the Magistrate.
5. That it be dated and signed by the Magistrate, and directed to the Sheriff of the proper county.

CHAPTER III.

OF THE EXECUTION OF A SEARCH WARRANT.

ARTICLE 313. Any Sheriff to whom a search warrant is delivered, shall execute the same without delay ; but a search warrant shall not be executed, except in the day time, nor by any other person than a Sheriff or his lawful Deputy.

*annex
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ART. 314. In the execution of a search warrant, the officer may call in aid any number of citizens in his county, who shall be bound to aid in the execution of the same.

ART. 315. The officer shall, upon going to the place ordered to be searched, or before seizing any property for which he is ordered to make search, give notice of his purpose to the person who has charge of, or is an inmate of the place, or who has possession of the property described in the warrant.

ART. 316. If an officer, in the execution of a search warrant, is resisted, he may use such force as is necessary to overcome the resistance, but no greater.

ART. 317. In the execution of a search warrant, the officer may break down a door or window of any house which he is ordered to search, if he cannot effect an entrance by other less violent means ; but when the warrant issues only for the purpose of discovering property stolen or otherwise obtained in violation of the Penal Law, without designating any particular place where it is supposed to be concealed, no such authority is given to the officer executing the same.

ART. 318. When the property, implements, arms or munitions, which the officer is directed to search for and seize, are found, he shall take possession of the same and carry them before the Magistrate. He shall also arrest any person whom he is directed to arrest by the warrant, and forthwith take such person before the Magistrate.

ART. 319. A search warrant must be executed within three days from the time of its issuance, and forthwith returned to the proper Magistrate ; but the Magistrate may,

in the warrant, direct that the same may be executed within a shorter period.

ART. 320. An officer taking any property, implements, arms or munitions, shall receipt therefor to the person from whose possession the same may have been taken.

ART. 321. Upon returning the search warrant, the officer shall state on the back of the same or on some paper attached to it, the manner in which it has been executed, and shall likewise deliver to the Magistrate an inventory of the property, implements, arms or munitions, taken in his possession under the warrant.

CHAPTER IV.

PROCEEDINGS ON THE RETURN OF A SEARCH WARRANT.

ARTICLE 322. When property is taken under a search warrant and delivered to a Magistrate, he shall, if it appear that the same was stolen or otherwise acquired in violation of the Penal Law, dispose of it according to the rules prescribed in Part III, Title VIII, Chapter III, of this Code.

ART. 323. When a warrant has been issued for the purpose of searching a suspected place, and there be found any such implements, arms or munitions, as are alleged to have been there kept or concealed, the same shall be safely kept by the Sheriff, subject to the order of the District Court of the proper county.

ART. 324. The Sheriff shall, in every case arising under the preceding Article, furnish the Magistrate who issued the warrant, with a certified schedule of the articles in his possession.

ART. 325. Arms or munitions, taken under a warrant in accordance with the provisions of this Title, shall become forfeited to the State, and shall be so adjudged by the District Court, upon the conviction or escape of any person accused of having had possession of, or of having concealed them.

ART. 326. Implements intended to be used for forging or counterfeiting, shall, upon the conviction or escape of the person accused of having had or concealed them, be destroyed by the Sheriff under the order of the Court.

ART. 327. When implements, supposed to be designed for forging or counterfeiting, are in the hands of the Sheriff, and the person accused of having had possession of, or of having concealed such implements, has been discharged by the Magistrate, the District Attorney shall cause the fact to be made known to the Court, who, (if satisfied upon investigation that they were designed for such purpose) shall cause them to be destroyed by the Sheriff, in the same manner as if the accused person had been convicted or had escaped.

ART. 328. When it appears upon investigation, that the implements seized were not such as might be or are commonly used for forging or counterfeiting, they shall be delivered to the person from whom they were taken.

ART. 329. The investigation spoken of in the preceding Articles, may be made by the District Judge, by hearing proof before a jury.

ART. 330. The Magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony, as on other examinations before him, and be governed by like rules.

ART. 331. If the Magistrate be satisfied there was good ground for issuing the warrant, he shall require the person arrested to give bail, as in other cases, to answer the accusation against him before the proper Court.

ART. 332. If the Magistrate be not satisfied that there was good ground for the issuance of the warrant, he may

discharge the defendant and order restitution of the property or articles taken from him, except implements which appear to be designed for forging or counterfeiting; and in such cases the implements shall be kept by the Sheriff, subject to the order of the proper Court. It shall be the duty of the Sheriff to report to the District Attorney all cases in which such implements are in his possession, and the accused person discharged.

ART. 333. Bail bonds taken in such cases shall have the same substantial requisites which are prescribed for other bail bonds taken before the Magistrates, and may be recovered upon in the same manner.

ART. 334. The Magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall file with the Clerk of the District Court, before the next term of said Court, all the original papers relating thereto.

TITLE IV.

OF THE PROCEEDINGS SUBSEQUENT TO COMMITMENT OR BAIL AND PRIOR TO THE TRIAL.

CHAPTER I.

THE ORGANIZATION OF THE GRAND JURY.

ARTICLE 335. The County Court, consisting of the Chief Justice and County Commissioners, or a quorum of that body, shall meet on the first Monday of January and the first Monday in July of each year, for the purpose of selecting the Grand Jurors, to serve at the next succeeding term of the District Court, in each county of the State.

ART. 336. A quorum, for the purposes specified in the preceding Article, shall consist of any three of the Commissioners, or of the Chief Justice and any two Commissioners.

ART. 337. In case a quorum of the Court be not in attendance at the time fixed in Article 335, any one or more of the members of the Court who may be present, may adjourn from day to day for one week, until the attendance of a quorum be had, and in case of a failure to hold a Court during said week, the Chief Justice of the county or (in case of his absence, or failure to discharge the duty then,) any two of the County Commissioners may call a meeting of the Court at as early a day as practicable after the first Monday of January and July, for the purpose of selecting the Grand Jury, for the next succeeding term of the District Court.

ART. 338. The Court, when assembled at a regular or called term as above provided, shall proceed to select a number of persons, not less than fifteen, nor more than twenty, to serve as Grand Jurors.

~~ART.~~ ART. 339. The Court shall take care to select persons having the following qualifications ; they shall be
~~ART. 339.~~

1. Citizens of the State and county in which they are to serve, qualified to vote under the Constitution and Laws.
2. Freeholders within the State, or householders within their respective counties.

ART. 340. The proceedings of the County Court, in selecting the Grand Jurors, shall be entered of record upon the minutes of said Court, which entry shall particularly state the names of the persons selected.

ART. 341. It is the duty of the County Court to see that the persons so selected be men of good moral character and intelligence ; and they shall be distributed, as to residence, as nearly as may be through the different parts of the county.

ART. 342. At each term of the County Court, when a Grand Jury is selected as herein provided, the names of the persons so selected shall be placed on a list to be kept in the office of the Clerk of said Court, in order that the same persons may not be compelled to serve at any two successive terms of the District Court.

ART. 343. The County Court shall, as far as practicable, so regulate the Grand Jury service in each county, (taking into consideration the amount of population,) as that such service may be equally divided among the citizens of the county, qualified to discharge the duty.

ART. 344. The Clerk of the County Court shall furnish to the Clerk of the District Court a certified list of the persons selected as Grand Jurors, within ten days after they have been selected.

ART. 345. The Clerk of the District Court shall issue a writ to the Sheriff of the county, directing him to summon the persons whose names have been furnished him as Grand Jurors, to attend at the proper term of the Court.

ART. 346. The Sheriff shall give notice to each person whom he is directed to summon, at least ten days before the meeting of the District Court. This notice may be given

verbally in person to each Juror, or by leaving a written notice at the house of such person, with some free white person over the age of fourteen years, who is an inmate of such house; and if any person so notified shall fail to attend as a Juror, he may be fined by the Court not exceeding the sum of fifty dollars.

ART. 347. If, for any cause, there should be a failure to select and summon a Grand Jury as herein directed, or when none of those summoned shall attend, the District Court shall on the first day of the organization thereof, direct a writ to be issued to the Sheriff, commanding him to summon any number of persons not exceeding twenty, to serve as Grand Jurors.

ART. 348. If as many as fifteen persons shall be in attendance on the District Court, who have been selected by the County Court in accordance with the provisions of this Chapter, the Court shall proceed to impanel a Grand Jury.

ART. 349. Each person who is presented to serve as a Grand Juror, shall, before being impanelled, be interrogated on oath by the District Judge, or under his direction, touching his qualifications.

ART. 350. In trying the qualifications of any person to serve on the Grand Jury, he shall be asked these questions,

1. Are you a citizen of this State and county, and a qualified voter at elections for Members of the Legislature?
2. Are you a freeholder in this State, or a householder in this county?

ART. 351. If, by the answer of the person interrogated, it appears that he is a citizen of the State and county, where the Court is held, is qualified by the Constitution and Laws to vote at elections for Members of the Legislature, and is either a freeholder in the State, or a householder in the proper county, he shall be deemed a competent Grand Juror.

ART. 352. Any person summoned, who does not possess the requisite qualifications, shall be excused by the Court from serving.

ART. 353. If it be found that there are as many as fifteen of those summoned to attend as Grand Jurors who are present and possess the proper qualifications, they shall be impanelled as the Grand Jury, unless the array or some particular member be challenged, as hereinafter provided, and by reason of such challenge the whole body of Grand Jurors is set aside, or a sufficient number to reduce it below the number of fifteen.

ART. 354. When a number less than fifteen are found to be in attendance, of persons qualified to serve as Grand Jurors, the Court shall require such additional number to be summoned as may be deemed necessary, so that a legal Grand Jury may be organized, of at least fifteen persons.

ART. 355. When, by challenges to particular individuals of those summoned, less than fifteen persons remain, or when from any cause whatever it is found that less than that number are present, the Court shall direct the Grand Jury to be completed as provided in the preceding Article.

answ. ART. 356. When the Grand Jury is completed, one of their body shall be appointed foreman, and the following oath shall be administered to each of said Jurors :
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" You solemnly swear (or affirm as the case may be,) that you will keep secret the proceedings and deliberations of the Grand Jury, that you will diligently enquire into, and true presentment make of all offences against the Penal Laws, committed within your jurisdiction, of which you may have knowledge or receive information, so help you God."

ART. 357. After the Grand Jury has been sworn; the Court shall give them instruction as to their duty.

ART. 358. One or more bailiffs may be sworn to attend upon the Grand Jury. The oath taken by a bailiff shall be to keep secret the proceedings of the Grand Jury.

ART. 359. A bailiff is to obey the instructions of the foreman, to summon all witnesses, and generally to perform all such duties as are required of him by the foreman ; where two bailiffs are appointed, one of them shall be always with the Grand Jury.

ART. 360. A Grand Juror is said to be *impanelled*, after

his qualifications have been tried, and he has been sworn. By the word *panel* is meant the whole body of Grand Jurors.

ART. 361. In case of the absence of the foreman of the Grand Jury, from sickness or other cause, the Court may appoint in his place some other member of the body.

ART. 362. Any person, before the Grand Jury have been impannelled, may challenge the array of Jurors, or any person presented as a Grand Juror.

ART. 363. A challenge to the array may be made for these causes only :

1. That the list of persons summoned by the Sheriff was not in fact selected by the County Court.

2. In case of a Grand Jury summoned by order of the District Court, where there has been a failure to act by the County Court, or a failure to attend on the part of the person summoned, that the Sheriff has acted corruptly in summoning any one or more of the Jurors.

ART. 364. A challenge to a particular Grand Juror may be for the following causes :

1. That he is under twenty-one years of age.

2. That he is not a citizen of the State, and a qualified voter under the laws.

3. That he is not a freeholder of the State, or a householder of the county.

4. That since the last term of the Court he has been prosecuted, and is under accusation, for some offence, indictable in the county where he is about to be placed on the Grand Jury.

5. That he is the prosecutor, upon an accusation against the person making the challenge.

6. That he is related by consanguinity or affinity to some person who has been held to bail, or who is in confinement upon a criminal accusation.

ART. 365. When a challenge to the array or to any individual has been made, the Court shall hear proof and decide in a summary manner whether the challenge be well founded or not.

ART. 366. If the challenge to the array be sustained, the Court shall, as in Article 347, direct another Grand Jury to be summoned.

ART. 367. If by challenge to any particular individual, the number of Grand Jurors be reduced below fifteen, the panel shall be completed by summoning others under the orders of the Court, as provided in Articles 354 and 355.

ART. 368. By the array of Grand Jurors is meant the whole body of persons summoned to serve as such, before they have been impanelled.

ART. 369. The proper time for a challenge to the array is before the Jurors have been interrogated as to their qualifications. A challenge to any particular individual is to be made after the qualifications of the Grand Jurors have been tested by their own oaths.

ART. 370. Twelve members shall be a quorum for the purpose of discharging any duty or exercising any right properly belonging to the Grand Jury.

CHAPTER II.

OF THE DUTIES, PRIVILEGES AND POWERS OF THE GRAND JURY.

ARTICLE 371. The Grand Jury, after being organized, shall proceed to the discharge of their duties, and some suitable place shall be prepared by the Sheriff, for their sessions.

ART. 372. The deliberations of the Grand Jury shall be secret, and any member of the body or bailiff who divulges anything transpiring before them, in the course of their official duties, shall be liable to a fine, as for contempt of the court, not exceeding one hundred dollars, and to imprisonment, not exceeding five days.

ART. 373. The District Attorney may go before the Grand Jury at any time, except when they are discussing the propriety of finding a bill of indictment, or voting upon the same.

ART. 374. When any question arises before a Grand Jury, respecting the proper discharge of their duties, or any matter of law, about which they may require advice, it is their right to send for the District Attorney, and take his advice thereon.

ART. 375. The District Attorney may examine the witnesses before the Grand Jury, and may advise as to the proper mode of interrogating them, if desired, or if he thinks it necessary.

ART. 376. The Grand Jury may also seek and receive advice from the Court, touching any matter before them, and for this purpose shall go into Court in a body; but they shall so guard the manner of propounding their questions, as not to divulge the particular accusation that is pending before them; or they may propound their questions in writing, upon which the Court may give them the desired information in writing.

ART. 377. The Grand Jury shall meet and adjourn at times agreed upon by a majority of the body, but they shall not adjourn at any one time for more than three days, and shall, as near as may be, conform their adjournments to those of the Court.

ART. 378. It is the duty of the Grand Jury to enquire into all offences liable to indictment, of which any of the members may have knowledge, or of which they shall be informed by the District Attorney or any other credible person.

ART. 379. The foreman of the Grand Jury may issue a summons for any witness in the county where they are sitting, which summons need only require the witness to appear before them at a time fixed or forthwith, without stating the matter in respect to which the witness will be called upon to testify.

ART. 380. If a person, notified by written summons, to

appear before the Grand Jury as a witness, refuses or fails to obey the summons, the bailiff shall make return of that fact upon the summons, and file the same with the Clerk of the District Court, who shall, thereupon, issue an attachment, which shall authorize the bailiff or Sheriff to arrest the witness and take him before the Grand Jury.

ART. 381. When a witness, brought in any manner before a Grand Jury, refuses to testify, such fact shall be made known to the District Attorney or to the Court, and the Court may compel the witness to answer the question, if it appear to be a proper one, by imposing a fine not exceeding one hundred dollars, and by committing the party to jail until he is willing to testify.

ART. 382. Witnesses shall first be sworn by the foreman not to divulge, either by words or signs, any matter about which they may be interrogated, and to keep secret all proceedings which may be had in their presence.

ART. 383. The Grand Jury in propounding questions to a witness, shall not ask in general terms, whether he has knowledge of the violation of any particular law, by any person, but shall name the person accused, shall state the offence with which he is charged, the county where the offence is said to have been committed, and, as nearly as may be, the time of the commission of the offence.

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ART. 384. The duty of Grand Jurors is to enquire of offences against the laws indictable within their respective counties; they cannot, therefore, make any general present-
ment, upon any political, religious or moral subject.

ART. 385. After all the testimony which is accessible to the Grand Jury shall have been given in respect to any criminal accusation, the vote shall be taken as to the presentment of a bill of indictment, and if twelve members concur in finding the bill, the foreman shall make a memorandum of the same, for the purpose of enabling the District Attorney to write the indictment.

ART. 386. The memorandum, furnished the District Attorney, shall state the name of the defendant, if known, the

nature of the offence, the time and place of its commission, and the name of the witnesses on whose testimony the accusation is sustained.

ART. 387. The District Attorney shall prepare all indictments which have been found by a Grand Jury, with as little delay as possible, and when so prepared shall deliver them to the foreman.

ART. 388. When the Grand Jury shall have acted upon any accusation before them, and the indictment has been prepared with the requisite form, they shall, in open Court, deliver the indictment to the Judge of the Court, a quorum at least being present on such occasions.

ART. 389. The fact of the presentment of the indictment, in open Court, by the Grand Jury, shall be entered upon the minutes of the proceedings of the Court, noting briefly the style of the criminal action, and the offence charged.

CHAPTER III.

OF INDICTMENTS AND INFORMATIONS.

ARTICLE 390. All felonies shall be presented by indictment only, except in cases specially provided for.

ART. 391. All misdemeanors may be presented by either information or indictment.

ART. 392. All offences known to the Penal Law of this State, must be prosecuted either by indictment or information. This provision does not include fines and penalties for contempt of Court, nor special cases in which inferior courts exercise jurisdiction.

*Revised
VII. 246* ART. 393. By the term *penal law*, as used in the preceding Article and elsewhere, is meant THE PENAL CODE, THE CODE OF CRIMINAL PROCEDURE, and all laws passed by the Legislature amendatory of either of those Codes.

ART. 394. An indictment is the written statement of a Grand Jury, accusing a person, therein named, of some act or omission, which, by law, is declared to be an offence.

*amend.
VII. 245* ART. 395. An indictment shall be deemed sufficient if it has the following requisites :

1. It shall commence "In the name and by the authority of the State of Texas."
2. It must appear therefrom that the same was presented in a court having jurisdiction of the offence set forth.
3. It must appear to be the act of a Grand Jury of the proper county.
4. It must contain the name of the accused, or state that his name is unknown, and give some description of him, and assign to him a fictitious name.
5. It must show that the place, where the offence was committed, is within the jurisdiction of the Court in which the indictment is presented.
6. The time alleged must be some date anterior to the presentment of the indictment, and not so remote as that the prosecution of the offence is barred by limitation.
7. The offence must be set forth in plain and intelligible words.
8. The indictment must conclude "against the peace and dignity of the State."
9. It shall be signed officially by the foreman of the Grand Jury.

ART. 396. It is not necessary to state in an indictment anything which it is not necessary to prove.

*Revised
VII. 246* ART. 397. The words of an indictment shall be taken and understood according to their usual meaning in ordinary language, except where a word or phrase is used, which by the laws of the State is defined particularly ; in such case the word or phrase shall bear that particular meaning.

ART. 398. The certainty required in an indictment, is such as will enable the accused to plead the judgment that may be given upon it, in bar of any prosecution for the same offence.

ART. 399. Where a particular intent is a material fact in the description of the offence, it must be stated in the indictment. But in any case where an intent to defraud is required to constitute an offence, it shall be sufficient to allege an intent to defraud, without naming therein the particular person intended to be defrauded.

ART. 400. When by law the District Court of more than one county has jurisdiction of the same offence, the indictment may allege the offence to have been committed in the county where the same is prosecuted, or in any county or place where the offence was actually committed.

ART. 401. No objection shall be heard by motion, plea, exception, or in any other manner to an indictment, on the ground that the Grand Jury finding the same was not legally constituted. Any objection to the qualification of one or all of the Grand Jurors may be made available in the manner provided in Article 363, and following Articles, and in no other way.

ART. 402. An *information* is a written statement filed and presented in behalf of the State by the District Attorney, accusing the defendant therein named of an offence which is by law subject to be prosecuted in that manner.

ART. 403. An information is sufficient if it have the following requisites :

1. It shall commence "In the name and by the authority of the State of Texas."
2. That it appear to have been presented in a court having jurisdiction of the offence set forth.
3. That it appear to have been presented by the proper officer.
4. That it contain the name of the person accused, or be stated that his name is unknown, and some fictitious name be assigned to him.

5. It must appear that the place where the offence is charged to have been committed, is within the jurisdiction of the court where the information is filed.

6. That the time of the commission of the offence be some date anterior to the filing of the information, and that the offence does not appear to be barred by limitation.

7. That the offence be set forth in plain and intelligible words.

8. That the information conclude, "against the peace and dignity of the State."

ART. 404. An information shall not be presented by the District Attorney, until oath has been made by some credible person, charging the defendant with an offence. This oath shall be reduced to writing and filed with the *information*. It may be sworn to before the District Attorney, who, for that purpose, shall have power to administer the oath, or it may be made before any officer authorized by law to administer oaths.

Repealed
77.296 ART. 405. When a fictitious name is given in an indictment or information, it must be therein stated that the proper name of the defendant is not known, but that the name given is used for his true name.

amend.
77.296 ART. 406. The rules laid down in Articles 397, 398, 399, 400 and 401, with respect to indictments, are applicable also to informations.

enqpt. 77.296.

CHAPTER IV.

OF PROCEEDINGS PRELIMINARY TO TRIAL.

§ I.

Of Enforcing the Attendance of the Defendant, and of Forfeiture of Bail.

ARTICLE 407. Wherever a defendant is bound by recognizance or bail bond, to appear at any term of a Court, his name shall be called at the door of the court-house, on the day set apart for taking up the criminal docket, or on any subsequent day when his case comes up for trial, and if he fail to appear, a forfeiture of his recognizance or bail bond, shall be taken.

ART. 408. Recognizances, and bail bonds, are forfeited in the following manner: The name of the defendant, and of his sureties, shall be called distinctly at the door of the court-house, and if the defendant do not appear within a reasonable time after such call is made, judgment shall be entered that the State of Texas recover of the defendant the amount of money in which he is bound, and of his sureties the amount of money in which they are respectively bound, which judgment shall state that the same will be made final unless good cause be shown, at the next term of the Court, why the defendant did not appear.

ART. 409. After the adjournment of the Court at which the proceedings set forth in the last two Articles have been had, a citation shall issue from the Court, notifying the sureties of the defendant, that the recognizance or bond has been forfeited, and requiring them to appear at the next term of the Court, and show cause why the same should not be made final; but it shall not be necessary to give notice to the defendant.

ART. 410. At the next term of the Court after forfeiture of the recognizance or bond, as provided for in Articles 407 and 408, if the sureties have been duly notified, or at the first

term of the Court after the service of such notice, the sureties shall answer in writing, and show cause why the defendant did not appear, which answer may be filed within the time limited for answering in a civil action.

[ART. 411.] a*

ART. 412. Sureties shall be entitled to notice by service of a citation, the length of time, and in the manner required in civil actions ; and, if any surety fail to appear after such notice, and show sufficient cause for the non attendance of the defendant, the judgment against him shall be made final at any time after the expiration of the time allowed for answering in a civil suit.

ART. 413. The following causes will exonerate the defendant and his sureties from liability upon the recognizance or bail bond.

1. The death of the defendant before the term of the Court at which the forfeiture was taken.

2. The sickness of the defendant, or some uncontrollable circumstance, which prevented his appearance at Court, and it must in every case be shown that his failure to appear arose from no fault on his part.

3. Failure to present an indictment or information at the first term of the Court, which may be held after the defendant has been admitted to bail, in cases where the party was bound over before indictment or information, and the prosecution has not been continued by order of the Court, as prescribed in Article 537.

ART. 414. The causes mentioned in the second subdivision of the preceding Article, shall not be deemed sufficient to exonerate the defendant or his sureties, unless he appear before final judgment on the bond or recognizance.

ART. 415. If, before final judgment is entered against the bail, the defendant appear, or be arrested and lodged in the Jail of the proper county, the Court may, at its discretion, remit the whole or part of the sum specified in the bond or recognizance.

ART. 416. When the defendant appears before the entry of final judgment, and sufficient cause is shown for his failure

* See note at the end of the Code.

to appear before the forfeiture taken, and a trial is had of the criminal action pending against him, he shall be entitled to have the forfeiture set aside and the criminal action against him shall stand for trial, but the State shall not be forced to try the same until reasonable time has been allowed to prepare for trial ; and the State shall, in such case, be entitled to a continuance of the cause.

ART. 417. When, upon a trial of the issue presented by the answers of the sureties, no sufficient cause is shown for the failure of the defendant to appear, the judgment shall be made final against him and his sureties, for the amount in which they are respectively bound ; and the same shall be collected by execution, as in civil actions. Separate executions shall issue against each party for the amount adjudged against him, and the costs be equally divided between the sureties, if there be more than one.

ART. 418. Where a defendant has been held to bail, or recognized to appear, and has failed to appear when called as prescribed in Article 407, a capias shall be issued, for his arrest.

ART. 419. In cases where the defendant has not been arrested or held to bail, before indictment or information is presented, there shall be issued a capias for his arrest, as provided in the succeeding Articles.

ART. 420. A capias is a writ issued by the Clerk of the District Court, and directed " To any Sheriff of the State of Texas," commanding him to arrest a person accused of an offence, and bring him before that Court forthwith, or on a day, or at a term stated in the writ.

ART. 421. A capias shall be held sufficient if it have the following requisites :

1. That it run in the name of "The State of Texas."
2. That it name the person whose arrest is ordered, or if unknown describe him.
3. That it specify the offence of which the defendant is accused, and it appear thereby that he is accused of some offence against the penal law of the State.
4. That it name the day or term when the same is returnable, or be made returnable forthwith.

5. That it be dated and signed by the Clerk, with his seal of office annexed.

ART. 422. A writ of capias shall be immediately issued upon each indictment or information presented, except in cases where the defendant is already in custody or on bail.

ART. 423. A writ of capias shall not lose its force or virtue, if not executed and returned at the time fixed in the writ, but may be executed at any time afterwards, and return made, and all proceedings under such writ shall be as valid as if the same had been executed and returned within the time specified in the writ.

ART. 424. When a defendant indicted for felony is not arrested during the term at which the indictment is presented, the Court in all bailable cases shall, before adjourning, fix the amount of the bail to be required, and the same shall be entered upon the minutes; and in issuing the writ, the Clerk shall specify therein the amount of the bail to be taken. But in case of neglect to comply with either of the requirements of this Article, the arrest of the defendant and the bail bond taken by the Sheriff, shall be as legal and valid as if there had been no such omission.

ART. 425. A defendant may be arrested under a writ of capias, by any peace officer; but, when so arrested, he shall be delivered to the Sheriff (together with the writ under which he was taken) to be dealt with as the law requires.

ART. 426. The Sheriff has authority in cases of misdemeanor, at all times, whether during a term of a Court, or in vacation, to take bail of the defendant; and he may take bail in cases of felonies, less than capital, when he makes an arrest under writ of capias during vacation.

ART. 427. In cases of arrest for felony, during a term of a Court, the Sheriff cannot take bail, but must forthwith bring the defendant before the Court, that he may be dealt with according to law.

ART. 428. Where an arrest is made under a writ of capias during vacation, the Sheriff shall, in a capital case, confine the de-

fendant in Jail, and the capias shall, for that purpose, be a sufficient warrant of commitment.

ART. 429. When, in accordance with the provisions of Articles 424 and 425, the Sheriff is authorized to take bail, he shall require of the defendant to enter into bond with one or more sureties, in the amount specified in the writ, and if no amount is specified, then in such sum as he may deem reasonable.

ART. 430. The provisions of Articles 426, 427, 428, and 429, refer to arrests made in the county where the prosecution is pending.

ART. 431. In every capital case, when a defendant is arrested, under capias, in a county other than that in which the prosecution is pending, it is the duty of the Sheriff who arrests, or to whom the defendant is delivered by some other peace officer, to convey him forthwith to the county from which the capias issued, for which service he is entitled to be paid according to the provisions of Article 952, and a failure to discharge the duty herein imposed, renders the Sheriff guilty of an offence.

ART. 432. When an arrest is made out of the county in which the prosecution is pending, in cases of felony, less than capital, and of misdemeanor, the Sheriff is authorized to receive from the defendant, bail according to the directions of the capias, or if no amount be fixed in the writ, then in some reasonable amount ; and he shall transmit, through the mail, to the Clerk of the proper Court, the bail bond and the capias, with his return thereon. But a Sheriff may, in any case convey the defendant and deliver him to the Sheriff of the proper county.

ART. 433. When a defendant, in a bailable case is arrested under capias, out of the county of the prosecution, and refuses to give bail, the Sheriff may place him in the Jail of the county where the arrest is made, or he may convey him to the proper county, and deliver him to the Sheriff thereof.— When the defendant is placed in Jail out of the county of the prosecution, it is the duty of the Sheriff making the arrest, immediately to give notice through the mail, of such arrest and confinement, to the Sheriff of the county where the pros-

ecution is pending, whose duty it shall be to convey such defendant without delay to the Jail of his county.

ART. 434. If a defendant be placed in Jail, out of the county of the prosecution, he shall be discharged from custody if not applied for and taken by the Sheriff of the proper county, before the end of ninety days from the time of his commitment ; provided, that this Article shall not apply to cases where the defendant has been placed in Jail out of the county of the prosecution, under some provision of this Code for want of a sufficient or safe Jail in the county of the prosecution.

§ II.

Of Witnesses and the Manner of Enforcing their Attendance.

ARTICLE 435. A subpœna may be issued to any county, on application to the Clerk, for witnesses either for the State or defendant.

amend. **ART. 436.** In cases of felony, after indictment found, the State or the defendant shall be entitled, on application to the Court, to a writ of attachment against the person of a witness, to compel his attendance upon any day set apart for the trial of a particular cause, or for taking up the criminal docket.

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amend. **ART. 437.** To obtain the writ of attachment, it is not necessary, in a case of felony, that a subpoena shall have issued, or that the defendant shall have entered into recognizance or given bond ; nor shall it be necessary to tender the witness his expenses or fees ; and the writ may be issued to any county of the State, but when issued to any county other than that where the prosecution is pending, oath shall be made by the defendant if he applies for the attachment, or by some credible person, when applied for by the State, setting forth the facts expected to be proved, and it must appear to the Court that the testimony sought is material.

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ART. 438. A subpoena is a writ issued to the Sheriff, or other proper officer, commanding him to summon a person therein named, to appear at a certain term of the Court, or on a certain day, to testify in a criminal action, or upon any proceeding before an examining Court, Coroner's Inquest, the Grand Jury, or before a Judge hearing an application under habeas corpus. If issued by the Clerk of the District Court to another county, (but in no other case,) it shall be authenticated by his official seal.

ART. 439. An attachment is a writ issued by a Clerk of the District Court, or by any Magistrate upon examination of a criminal accusation, or in any other proceeding before him when authorized by law, or by a Judge sitting in cases of habeas corpus, commanding some peace officer to take the body of a witness and bring him before such Court, Magistrate or Judge, on a day named, to testify in behalf of the State or of the defendant, as the case may be ; when issued by a Clerk it shall be authenticated by his official seal.

ART. 440. No attachment shall be issued for a witness, in a case of misdemeanor, until it has been shown that he refuses to obey a subpoena, or that he fails to attend on some day set apart for the criminal docket, after having entered into recognizance or bond, whether with or without security.

ART. 441. It shall be understood that a witness refuses to obey a subpoena :

1. If he is not in attendance on the Court, on the day set apart for taking up the criminal docket, or any day subsequent thereto, and before the final disposition or continuance of the particular case in which he is a witness.

ART. 442. Witnesses on behalf of the State or defendant may, at the request of either party, be required to enter into recognizance in the District Court, to appear and testify in a criminal action.

ART. 443. A witness who makes affidavit that he is unable to give security, or to deposit a sufficient amount of money in lieu thereof, shall be recognized, or give bond, without security.

ART. 444. If a witness refuse to obey a subpoena,

capital case, he shall be fined, at the discretion of the Court, not exceeding five hundred dollars. Judgment may be entered on motion, of either the District Attorney of the defendant, or his counsel, against such defaulting witness, which, however, shall not be made final, until the witness has been duly notified to show cause why he did not appear.

ART. 445. A refusal to obey a subpoena in case of felony, less than capital, shall subject the witness to a fine not exceeding two hundred dollars; and in cases of misdemeanor, to a fine not exceeding one hundred dollars.

ART. 446. Before a fine is entered against a witness, for disobedience to a subpoena, it must be made to appear to the Court, by the oath of the defendant, or some other credible person, or the statement of the District Attorney, that the testimony of such witness was material, either to the prosecution or defence.

ART. 447. When a fine is entered against a witness, for failure to appear and testify, the judgment shall be conditional, and a citation shall issue to him to show cause why the same should not be made final; and such citation shall be served in the manner, and for the length of time prescribed for citations in civil actions.

ART. 448. Witnesses cited to show cause, as provided in the preceding Article, may do so in writing or verbally, at any time during the term of the Court next after they are cited.

ART. 449. When a fine has been entered against a witness, but no trial of the cause takes place, and such witness afterward appears and testifies upon the trial thereof, it shall be discretionary with the Judge, though no good excuse be rendered, to reduce the fine or to remit it altogether; but he shall, nevertheless, be adjudged to pay all the costs accruing in the proceeding against him by reason of his failure to attend.

ART. 450. When a witness has given bail either in the District Court, or before the Magistrate, for his appearance, the recognizance or bail bond may be enforced against such witness and his sureties, in the manner pointed out in Articles

407, 408, 409, and 410, for recovery upon the recognizance or bail bond of the defendant.

ART. 451. When no security was given by a witness, but his individual recognizance or bond was taken, judgment final may, upon his failure to appear, be entered against him for the amount in which he is bound ; which judgment, however, he may have set aside by showing, at any time within twelve months after the rendition thereof, sufficient cause for his failure to attend.

ART. 452. It shall be in the discretion of the Court to judge of the sufficiency of an excuse rendered by a witness ; but this discretion is to be so exercised as to require the utmost strictness in receiving such excuse.

ART. 453. The sureties of a witness have no right in any case, to discharge themselves by the surrender of such witness, after the forfeiture of their recognizance or bond.

ART. 454. Witnesses in criminal cases shall be allowed one dollar and fifty cents a day, for each day they are in attendance upon the Court, and six cents for each mile they may travel in going to or returning from the place of trial. But the State shall in no case pay costs as witness fees.

ART. 455. The State shall in no case pay witness fees or cost.

ART. 456. The defendant, on acquittal, shall, nevertheless, in all cases, be bound for the fees of his own witnesses.

ART. 457. Upon conviction, in all cases, the costs accruing from the attendance of witnesses, shall be taxed against the defendant.

§ III.

Service of a Copy of the Indictment.

amend.
VII. 23.

ARTICLE 458. In every case of felony, when the accused is in custody, or as soon as he may be arrested, it shall be the duty of the Clerk of the Court, where an indictment has been presented, immediately to make out a correct copy of the same, and deliver such copy to the Sheriff, who shall immediately deliver the same to the defendant.

ART. 459. In misdemeanors, it shall not be necessary before trial to furnish the defendant with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given at as early a day as possible; but no trial shall be delayed by reason of a failure to comply with such demand.

ART. 460. When the defendant, in cases of felony, is on bail at the time the indictment is presented, it is not necessary to serve him with a copy; but the Clerk shall deliver a copy of the same to the defendant, or his counsel, when requested, at the earliest possible time; but no trial shall be delayed by reason of a failure to deliver the copy upon such demand.

§ IV.

Of Arraignment, and of Proceedings where no Arraignment is necessary.

ARTICLE 461. There shall be no arraignment of a defendant except upon an indictment for a capital offence.

ART. 462. An arraignment takes place for the purpose of reading to the defendant the indictment against him, and hearing his answer thereto.

ART. 463. No arraignment shall take place until the expiration of at least two entire days after the day on which a copy of the indictment was served on the defendant, unless the right to such copy or to such delay be waived, or the defendant was on bail.

ART. 464. Two days service of a copy of the indictment is allowed the defendant, in order that he may, within that time, file written pleadings, and that the same may be disposed of; and the Court shall, before proceeding to have the defendant arraigned, ascertain whether any motion, exception or plea to the jurisdiction has been filed; and if any such pleading is filed, it shall be disposed of before arraignment.

ART. 465. The allowance of two days for filing written pleadings is not to be so construed as to preclude the defendant from filing the same at any time, before he is arraigned; the provision with respect thereto is intended to give at least two days for making such defence, before any arraignment can take place.

ART. 466. When the defendant is brought into Court, for the purpose of being arraigned, if it appear that he has no counsel, and is too poor to employ counsel, the Court shall appoint one or more practising attorneys to defend him.

ART. 467. If written pleadings have been filed in the cause, they shall be heard and determined before arraignment; and where the defendant is too poor to employ counsel, the counsel appointed by the Court shall have one entire day after their appointment, within which to file such pleadings; but if no such pleadings be filed within that time, or if filed, are disposed of, the defendant may again, after the expiration of the day allowed, be brought into Court and arraigned.

ART. 468. When the defendant is arraigned, his name, as stated in the indictment, shall be distinctly called; and, unless he suggest by himself or counsel, that he is not indicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defence.

ART. 469. If the defendant, or his counsel for him, sug-

gest that he bears some name different from that stated in the indictment, the same shall be noted upon the minutes of the Court, the indictment amended, the style of the cause changed, so as to give his true name, and the cause proceed, as if the true name had been first recited in the indictment.

annex.
III. 236

ART. 470. If the defendant allege that he is not indicted by his true name, and refuse to say what his real name is, the cause shall proceed as if the name stated in the indictment were true, and the defendant shall not be allowed to contradict the same by way of defence.

ART. 471. Where a defendant is described as a person whose name is unknown, and is indicted by a fictitious name, he may have the indictment so corrected as to give therein the true name; but unless he elect to do this, the cause shall proceed as if the fictitious name used were the real name of the defendant, and he may be tried and convicted, or acquitted under such fictitious name.

ART. 472. The name of the accused having been called, if no suggestion, such as is spoken of in the four preceding Articles, be made, or being made, is disposed of as before directed, the indictment shall be read, and the defendant asked whether he is guilty or not, as therein charged.

Reopened
III. 246

ART. 473. If the defendant answer that he is not guilty, the same shall be entered upon the minutes of the Court; if he refuse to answer, the plea of not guilty shall in like manner be entered.

ART. 474. After a plea of not guilty, no motion to set aside, or special plea, or exceptions to an indictment shall be received.

ART. 475. If the defendant plead guilty, he shall be admonished by the Court of the consequences; and no such plea shall be received, unless it plainly appear that he is sane, and is uninfluenced by any considerations of fear, by any persuasion, or delusive hope of pardon prompting him to confess his guilt.

ART. 476. Where a defendant persists in pleading guilty,

if the punishment of the offence is not absolutely fixed by law, and beyond the discretion of the Jury to graduate in any manner, a Jury shall be impaneled to assess the punishment, and evidence submitted to enable them to decide thereupon.

ART. 477. The preceding Article refers to offences of every description, whether felonies or misdemeanors, but in no case shall judgment of death be given, except upon the verdict of a Jury, rendered after investigation of the facts, upon evidence submitted. *and* *W. 238*

ART. 478. In all cases where it is not required that the defendant be arraigned, he shall be required before the time at which his trial commences, to plead whether or not he is guilty, as charged in the indictment. *and* *W. 246*

ART. 479. The same proceedings shall be had in cases of felony less than capital, with respect to the name of the defendant, and the amendment of the indictment, as are provided in Articles 468, 469, 470 and 471, with respect to such proceedings in capital cases.

ART. 480. The plea of not guilty shall, in every criminal action, be entered, where the defendant refuses to answer; and in all cases of felony, when a plea of guilty is offered, like proceedings shall be had as are directed in Articles 475 and 476, in relation to capital offences. But in misdemeanors, punishable by fine, not exceeding one hundred dollars, and without imprisonment, the District Attorney may consent that the Jury affix the lowest penalty of the law; or where no minimum is established, he may agree to a fine not less than ten dollars. *and* *W. 238*

§ V.

Of the Pleadings in Criminal Actions.

ARTICLE 481. The only pleading in criminal actions, on the part of the State, is the indictment or information. *and* *W. 238*

ART. 482. On the part of the defendant the following are the only pleadings :

1. The motion to set aside the indictment or information.
2. A special plea, setting forth one or more facts, as cause why the defendant ought not to be tried upon the indictment or information presented against him.
3. An exception to the indictment or information, for some matter of form or substance.
4. A plea of guilty.
5. A plea of not guilty.

ART. 483. A motion to set aside an indictment or information, shall be based on one or more of the following causes, and no other :

1. That it appears by the records of the Court, that the indictment was not found by at least twelve Grand Jurors, or that the information was not presented after oath made as required in Article 404.
2. That some person not authorized by law, was present when the Grand Jury were deliberating upon the accusation against the defendant, or were voting upon the same, and the issue of fact, arising thereon, shall be tried by the Judge without a Jury.

ART. 484. The only special pleas which can be heard for the defendant are :

1. That he has been before convicted, legally, in a court of competent jurisdiction, upon the same accusation, after having been tried upon the merits, for the same offence.
2. That he has been before acquitted by a Jury, of the accusation against him, in a court of competent jurisdiction, whether the acquittal was regular or irregular.
3. That the Court before whom he is prosecuted has no jurisdiction to try the cause.

ART. 485. Every special plea shall be verified by the affidavit of the defendant.

ART. 486. The plea to the jurisdiction shall be tried by the Court ; all issues of fact, presented by a special plea, shall be tried by a Jury.

ART. 487. There is no exception to the substance of an indictment or information, except :

1. That it does not appear from the face of the same, that any offence against the law was committed by the defendant.
2. That it appears from the indictment or information that a prosecution for the offence is barred by lapse of time; or that the offence was committed after the finding of the indictment.
3. That it contains matter which is a legal defence or bar to the prosecution.

ART. 488. Exceptions to the form of the indictment or information, may be taken for the following causes only :

1. That the indictment or information does not appear to have been presented in the proper Court as required by Article 395 or 403.
2. The want of any other requisite of form prescribed by Articles 395 and 403, except the want of the signature of the foreman of the Grand Jury.

ART. 489. All motions to set aside an indictment or information, all special pleas and exceptions, shall be in writing ; and they shall all be filed at the same time.

ART. 490. Two entire days after the service of a copy of the indictment, shall be allowed in every case, (where the law requires such service to be made,) before the defendant can be compelled to file written pleadings.

ART. 491. In cases where no service of a copy is required, two entire days shall be allowed after the presentment of the indictment or information, for the defendant to file written pleadings.

ART. 492. The two preceding Articles refer to cases where a defendant has been arrested before indictment found, and is, at the time of the presentment of the same, on bail, or in custody.

ART. 493. If a criminal action be continued by the State or by operation of law, the defendant may file his pleadings at any time on or before the second day of the term after such

continuance, except in cases where an arraignment has already taken place.

ART. 494. Two entire days as here and elsewhere used, mean two days exclusive of all fractions of a day.

ART. 495. Where a defendant has never been arrested before indictment or information, and is arrested during the term of the Court at which the prosecution is commenced, he shall be allowed two entire days after his arrest, in which to file written pleadings; or if it be a case in which he is entitled to be served with a copy of the indictment, he shall be allowed two entire days after service of a copy thereof.

ART. 496. If, after the adjournment of the Court, the arrest takes place, a defendant shall be allowed to file written pleadings at any time on or before the second day of the next term of the Court in which the prosecution is pending; where he is entitled to be served with a copy of the indictment, he may file such pleadings within two days after the service thereof; and if the service be made during vacation, he may file such pleadings at any time on or before the second day of the term of the Court next after receiving a copy of the indictment.

ART. 497. The plea of "not guilty" shall be made orally, and noted upon the minutes of the Court. It shall be construed to be a denial of every material allegation in the indictment. Under the plea of "not guilty," evidence to establish the insanity of the defendant, and every fact whatever, tending to acquit him of the accusation, may be introduced, except such facts as, by Article 484, are proper for a special plea.

§ VI.

Of the Argument and Decision of Motions, Pleas and Exceptions.

ARTICLE 498. In every case where a motion to set aside an indictment or information, or a special plea or exception,

has been filed, the Court shall decide upon such pleadings at the earliest possible day consistent with a due administration of justice; and for that purpose shall, on the day set for the trial of the criminal docket, take up for argument and decision all such pleadings as are then filed.

ART. 499. The provisions of the preceding Article shall not preclude the hearing and determination at any other time, of all written pleadings which are to be tried by the Court.

ART. 500. The counsel of the defendant has the right to open and conclude the argument in such cases.

ART. 501. Where the matters, involved in any such written pleading, depend in whole or in part upon testimony either written or verbal, and not altogether upon the record of the Court, every process known to the law may be obtained, either on behalf of the State or of the defendant, for the purpose of procuring such testimony ; but there shall be no delay on account of the want of the testimony, unless it be shown to the satisfaction of the Court, that all the means given by law have been used to procure the same.

ART. 502. The motion to set aside an indictment, all exceptions and such special pleas as are to be tried by the Judge without a Jury, shall be heard together, and shall be decided without delay.

ART. 503. Such special pleas as set forth matter of fact proper to be tried by a Jury, shall be submitted and tried with the plea of "not guilty."

ART. 504. Where the motion to set aside an indictment, or information, or an exception to the same, is sustained, the defendant, in a case of misdemeanor, shall be discharged, but may be again prosecuted within the time allowed by law.

ART. 505. If the motion to set aside, or the exception to the indictment or information, be sustained, the defendant shall not therefore be discharged, but in cases of felony, may be immediately recommitted by the order of the Court, upon motion of the District Attorney, or without motion. And

proceedings may be afterwards had against him, as if no prosecution had ever been commenced.

ART. 506. Where, after the motion or exception is sustained, it is made known to the Court by sufficient testimony, that the offence of which the defendant is accused, will be barred by limitation before another indictment or information can be preferred, he shall in every case be fully discharged.

ART. 507. If the exception to an indictment or information, is made upon the ground that there is no offence against the law charged therein, the defendant shall be discharged, unless an affidavit be filed accusing him of the commission of an offence punishable by law.

ART. 508. When the exception to an indictment or information is merely on account of form, the same shall be amended, if decided to be defective, and the cause proceed upon such amended indictment or information.

ART. 509. Where a special plea is filed by the defendant, the District Attorney may except to its sufficiency, for substantial defects ; and if the exception be sustained, the plea may be amended.

ART. 510. If the plea be not excepted to, it shall be considered that issue is taken upon the same.

ART. 511. When a special plea alleges that the defendant has been before acquitted or convicted of the same offence, upon a trial in a Justice's Court, and it appears on the trial, that, from the facts proved, or the law governing the case, that Court had no jurisdiction, the former conviction or acquittal shall have no effect whatever, and it is not necessary for the District Attorney to reply to the plea in order to present the question of jurisdiction.

ART. 512. Judgment shall in no case be given against the defendant, where his motion, exception, or plea is overruled ; but he shall in all cases be allowed to plead not guilty. If he refuse to plead, it shall be considered as if the plea were offered, and be noted accordingly.

§ VII.

Of Continuances.

ARTICLE 513. Criminal actions are considered as continued by operation of law, when there is not sufficient time for trial at any particular term of a Court, or where the defendant has not been arrested.

ART. 514. The trial of a criminal action may be postponed on the written application of the State, or of the defendant, upon sufficient cause shown.

ART. 515. Upon the first application by the District Attorney, he shall make a statement in writing, in which he shall set forth the cause for continuance ; and if the same be asked on account of the absence of a witness, he must set forth that the testimony is material, and that the process authorized by law has been issued or applied for, or must show some sufficient excuse for failing to apply therefor. The issuance of, or application for a subpoena, shall not be considered due diligence in cases where the law authorizes the issuance of an attachment.

ART. 516. The District Attorney, on any subsequent application for a continuance, must also set forth in writing the facts he expects to establish by the witness, and must state that he expects to be able to procure his attendance at the next term of the Court.

ART. 517. If the cause of continuance be any other than the want of attendance on the part of a witness, the District Attorney shall distinctly set it forth in his written application.

ART. 518. It shall be sufficient upon the first application, by the defendant, for a continuance, if the same be for want of a witness, to state—

1. The name of the witness and his residence, if known, or that his residence is not known.
2. The diligence which has been used to procure his attendance ; and it shall not be considered sufficient diligence to

have caused to be issued, or to have applied for a subpoena, in cases where the law authorizes the issuance of an attachment.

3. The facts which are expected to be proved by the witness; and it must appear to the Court that they are material.

4. That the witness is not absent by the procurement or consent of the defendant.

5. That the application for continuance is not made for delay.

annex ART. 519. Subsequent applications for continuances on the part of the defendant, shall in addition to the requisites in the preceding Article, state also,

1. That the testimony cannot be procured from any other source.

2. That the defendant has a reasonable expectation of procuring the same at the next term of the Court.

3. And in cases where depositions are allowable, he must also show that due diligence has been used, to take the deposition of the witness.

ART. 520. A criminal action may be continued on the application of the defendant, for good cause other than the absence of a witness; but he shall in all cases set forth fully and distinctly, the ground on which the continuance is asked.

ART. 521. All applications for continuance, on the part of the defendant, must be sworn to by himself.

ART. 522. It shall not be necessary to file any written motion for a continuance; the motion based upon the written statement may be made orally.

Appendix ART. 523. No application for a continuance shall be heard until after all motions, special pleas, and exceptions have been filed and acted upon by the Court; provided that two days shall have elapsed after the service of a copy of the indictment where such service is required to be made, or that two days have elapsed from the presentment of the indictment or information, where service of a copy is not necessary; and after the continuance of a cause on the application of the defendant, he shall not at the next, or any subsequent term of the Court, be permitted to interpose any other plea than that of not guilty.

ART. 524. If a defendant in a capital case demand a trial, and it appear that more than one continuance has been granted to the State, and that the defendant has not before applied for a continuance, he shall be entitled to be admitted to bail. *amend.* *W. 239*

ART. 525. After the grant of more than two continuances to the State, in any criminal action, the defendant shall be entitled to a discharge upon his individual recognizance. *W. 246*

ART. 526. A continuance may be granted on the application of the defendant, after the trial has commenced, where it is made to appear to the satisfaction of the Court, that by some unexpected occurrence, since the trial commenced, which no reasonable diligence could have anticipated, the defendant is so taken by surprise that he cannot then have a fair trial; or the trial may be postponed to a subsequent day of the term. *amend.* *W. 239*

§ VIII.

Change of Venue.

ARTICLE 527. A change of venue may be granted on the written application of the defendant, supported by his own affidavit, and the affidavit of at least two other respectable persons, for either of the following causes. *amend.* *W. 239*

1. That there exists in the county where he is prosecuted, so great a prejudice against him that he cannot, to the best of his belief, obtain a fair and impartial trial.
2. That there is a dangerous combination against him, instigated by influential persons, by reason of which he cannot expect a fair trial.

ART. 528. Where an unsuccessful effort has been once made in any county to procure a Jury for the trial of a felony, and all reasonable means have been used, if it be made to appear to the Court, by the written affidavit of the District Attorney, or any other credible person, that no Jury can probably be had in that county, the Court may order a change

of venue, and cause the reasons therefor to be placed upon the minutes of the proceedings.

ART. 529. The venue shall not, in any case, be changed upon the application of the defendant, until after all motions, special pleas, and exceptions have been filed and acted upon, and if overruled the plea of not guilty entered.

ART. 530. Upon the grant of a change of venue, the criminal cause shall be removed to some adjoining county, the court-house of which is nearest to the court-house of the county where the prosecution is pending, unless it be made to appear in the application, that such nearest county is subject to some objection, sufficient to authorize a change of venue in the first instance.

ART. 531. If it be shown in the application for a change of venue or otherwise, that all the counties adjoining that in which the prosecution is pending, are subject to some valid objection, the cause may be removed to such county as the Court may think proper.

ART. 532. When an order for a change of venue has been made, the Clerk of the Court, where the prosecution is pending, shall make out a true transcript of all the orders made in the cause, and shall transmit the same to the proper county, and shall send the original papers also with the transcript.

ART. 533. The Clerk shall also make a correct copy of all the original papers where a change of venue is ordered, and shall retain such copy in his office, to be used in case the originals, or any of them be lost.

ART. 534. When a change of venue is ordered, and the defendant is on bail, he shall be required to enter into recognizance forthwith, conditioned for his appearance before the proper Court, at the next succeeding term thereof; or if the Court of the county to which the cause is taken be then in session, he shall be recognized to appear before said Court, on a day fixed, and no change of venue shall take effect until after the defendant has been so recognized.

ART. 535. When the venue is changed in any criminal action, if the defendant be in custody, an order shall be made

for his removal to the proper county, and his delivery to the Sheriff thereof before the next succeeding term of the District Court of the county to which the case is to be taken ; and he shall be removed by the Sheriff accordingly, and delivered as directed in the order.

ART. 536. If the District Court of the county to which the case is removed be then in session, the defendant shall be removed forthwith and delivered to the Sheriff of such county.

§ IX.

Of Dismissing Prosecutions.

ARTICLE 537. When a defendant has been detained in custody, or held to bail for his appearance to answer any criminal accusation before the District Court, the prosecution, unless otherwise ordered by the Court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant at the next term of the Court which is held after his commitment or admission to bail.

ART. 538. The District Attorney may, by permission of the Court, dismiss a criminal action at any time.

TITLE V.

OF TRIAL AND ITS INCIDENTS.

CHAPTER I.

OF THE MODE OF TRIAL.

ARTICLE 539. The only mode of trial upon issues of fact, in the District Court, is by a Jury of twelve men, unless in cases specially excepted.

ART. 540. In all prosecutions for felonies the defendant must be personally present on the trial ; and he must likewise be present in all cases of indictment or information for misdemeanors where the punishment is imprisonment in Jail.

ART. 541. In all other cases of misdemeanor the defendant may appear by counsel if he has given bail, and the trial proceed without his personal presence ; and he may, by consent of the District Attorney, appear by counsel in such cases where he has not given bail.

ART. 542. When the defendant, in a case of felony, is on bail, he shall, before the trial commences, be placed in the custody of the Sheriff, and his bail be considered as discharged.

ART. 543. If there be a mistrial in a case of felony, the original sureties of the defendant shall be still held bound for his appearance, unless they surrender him in open Court. In such case he shall be required to give other bail. When the surrender is made by one or more sureties only, and there are others on the bond or recognizance, those making the surrender are discharged and the others are to be considered as still bound ; and additional security may be given in place of the persons so discharged.

ART. 544. There shall be kept by each District Clerk a criminal docket, in which shall be set down the style of each criminal action, the nature of the offence, the names of counsel and the proceedings had at each term of the Court.

ART. 545. The District Court shall, on the first day of its organization at each term, fix a day for taking up the criminal docket, which shall be noted on the minutes; but in case of failure to make such order the criminal docket may be taken up on any day not earlier than the third day of the term.

ART. 546. In cases of felony less than capital and of misdemeanor, the defendant is required, when his cause is called for trial, before it proceeds further, to plead by himself or counsel whether or not he is guilty.

ART. 547. By the term "called for trial" is meant the stage of the cause when both parties have announced that they are ready, or when a continuance, being applied for, has been denied.

CHAPTER II.

FORMATION OF THE JURY.

ARTICLE 548. When there is pending in any District Court a criminal action for a capital offence, the District Attorney may at any time after indictment found, on motion, obtain an order for summoning any number of persons not less than thirty-six nor more than sixty, as may be deemed advisable, from whom the Jury for the trial of such capital case is to be selected.

ART. 549. The Clerk shall, upon this order, forthwith issue a writ to the Sheriff, commanding him to summon the

number of persons named in the order to appear on a certain day therein named, to act as Jurors. This writ is called "a special venire facias."

ART. 550. The Court, in granting the order, shall, in every case, caution and direct the Sheriff to summon such men as have legal qualifications to serve on Juries, informing him of what those qualifications are, and shall further direct him, as far as he may be able, to summon men of good character, and such as are not prejudiced against the defendant or biased in his favor, if he knows of the existence of such bias or prejudice.

ART. 551. Any Sheriff who shall wilfully summon, under a special venire facias, persons whom he knows to be biased or prejudiced in favor of, or against the defendant, is guilty of an offence.

ART. 552. The Sheriff, so soon as he receives the order, shall proceed to summon the Jurors, and make return of the same to the Clerk of the Court.

ART. 553. The Clerk, immediately upon receiving the list of the names of the persons summoned under a special venire facias, shall make a copy thereof and shall furnish the same to the Sheriff, who shall deliver such copy to the defendant.

ART. 554. No defendant, in a capital case, shall be brought to trial, until he has had one entire day's service of a copy of the names of persons summoned under a special venire facias, except where he waives the right. But the service may be made at any time after indictment found, whether before or after arraignment.

ART. 555. When any capital case is called for trial, the list of persons summoned as Jurors shall be called at the Courthouse door, and such as are not present may be fined by the Court a sum not exceeding fifty dollars.

ART. 556. In forming the Jury, the names of the persons summoned shall be called in the order they stand upon the list, and, if present, shall be tried as to their qualifications, and, unless challenged, shall be impanelled.

ART. 557. When any person is not present at the time his name is called in the proper order, an attachment may, at the request of the State, or of the defendant, issue for him ; but no cause shall be unreasonably delayed on account of the absence of such person.

ART. 558. A person summoned, who is not present, may, upon his appearance before the jury is completed, be impanelled as a Juror, unless challenged.

ART. 559. In impanelling the Jury, the person to be tried as to his qualifications shall first be sworn in every case to answer questions, and shall be interrogated touching his qualifications, as pointed out in Chapter III, of this Title.

ART. 560. The foregoing Articles of this Chapter are applicable to capital cases, but they shall apply also to cases of felonies less than capital, when not inconsistent with the next succeeding Articles of this Chapter.

ART. 561. A special venire facias shall, in like manner, be issued to summon persons to form a Jury in criminal actions for offences less than felony ; but there shall be summoned in such cases not more than thirty-six persons, nor less than twenty-four.

ART. 562. It shall not be necessary to furnish the defendant, in any other than a capital case, with a list of the persons summoned as Jurors; but if such list be demanded by himself or counsel, a copy shall be furnished.

ART. 563. The oath administered to a Juror in any criminal action shall be as follows :

“ You solemnly swear that you will a true verdict render in the case of the State of Texas against (A. B.) the defendant, so help you God.”

ART. 564. The Jurors summoned on any special venire, or as many thereof as the Court may direct, may be ordered to remain in attendance from day to day until the criminal docket is disposed of for the term ; and such order shall take the place of the special venire facias for each cause which may be called for trial, unless otherwise ordered by the Court.

Augt. 29. ART. 565. In the cases contemplated in the preceding Article, the Court may direct that the calling of the persons summoned shall commence at any name on the list; after which the calling shall proceed as provided in Article 556, after reaching the bottom returning to the top of the list.
Augt. 29.

CHAPTER III.

OF CHALLENGES.

ARTICLE 566. A challenge is an objection to the impanelling of a Juror, made either by the State or by the defendant.

ART. 567. A challenge is either to the array or to a single Juror.

ART. 568. The array of Jurors summoned for the trial of any criminal action, may be challenged by the State, when it can be shown that the officer summoning the Jurors has acted corruptly, and has wilfully summoned Jurors with a view to securing an acquittal.

ART. 569. The defendant may challenge the array for the following cause only :

That the officer summoning the Jury has acted corruptly and has wilfully summoned persons upon the Jury known to be prejudiced against the defendant, and with a view to cause him to be convicted.

ART. 570. Challenges to individual Jurors are of two kinds, *peremptory* and *for cause*.

ART. 571. A peremptory challenge is made to a Juror without assigning any reason therefor.

ART. 572. In capital cases the defendant shall be entitled to twenty peremptory challenges, and the State to ten, and where there are more defendants than one tried together, each defendant shall be entitled to twelve peremptory challenges, and the State to six for each defendant.

ART. 573. In prosecutions for felonies not capital, the defendant shall be entitled to ten peremptory challenges and the State to five, and where more defendants than one are tried together, each defendant shall be entitled to six peremptory challenges, and the State to three for each defendant.

ART. 574. In misdemeanors, the State and defendant shall be each entitled to five peremptory challenges; and if there are more defendants than one tried together, each defendant shall be entitled to three peremptory challenges.

ART. 575. A challenge for cause is an objection made to a particular Juror, alleging some fact which renders him incapable or unfit to serve on the Jury. It may be made for either of the following reasons:

1. That the Juror has been convicted of some offence which, by law, disqualifies him from serving on a Jury.
2. That his name is not upon the list required to be kept by the County Court from which Jurors are drawn.
3. That he is not twenty-one years of age, a qualified elector under the Constitution and Laws, a resident of the proper county and a householder in that county, or freeholder in the State.
4. That he is insane, or has such a defect in the organs of seeing, feeling or hearing, or such bodily or mental defect or disease as renders him unfit for jury service.

These are called principal causes of challenge.

ART. 576. The following are also causes of challenge to a Juror : *amend.*

1. That the Juror is related by consanguinity or affinity to the defendant, or is his master or guardian.
2. That he is related by consanguinity or affinity to the person injured by the commission of the offence, or to the private prosecutor, if there be one.

3. That he served on the Grand Jury which found the indictment.
4. That he served on a petit Jury, in a former trial of the same case.
5. That he has a bias or prejudice in favor of or against the defendant.
6. That he has formed such an opinion, whether from the evidence or from hearsay, as will, in the opinion of the Juror himself, render him not an impartial Judge of the defendant's case.

ART. 577. In testing the qualifications of a Juror, he shall himself be sworn to answer questions, and any other proof may be also heard touching the subject; but a Juror shall not be asked a question the answer to which may show that he has been convicted of an offence which disqualifies him.

ART. 578. No Juror shall, on the trial of any criminal action for felony, be impanelled when it appears that he is subject to either the first, third or fourth cause of challenge mentioned in Article 575, although both parties may consent, and it is the duty of the Court, in every case of felony, to cause questions to be asked the Juror for the purpose of testing his qualifications, under the second and third subdivisions of said Article.

ART. 579. The Court is the Judge, after proper examination, of the qualifications of a Juror.

CHAPTER IV.

OF THE TRIAL BEFORE THE JURY.

ARTICLE 580. A Jury having been impanelled in any criminal action, the cause shall proceed to trial in the following order :

1. The indictment or information shall be read to the Jury by the District Attorney.
2. The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall be so stated.
3. The District Attorney, or the counsel prosecuting in his absence, shall state to the Jury the nature of the accusation and the facts which are expected to be proved by the State in support thereof.
4. The testimony on the part of the State shall be introduced.
5. The nature of the defences relied upon shall be stated by the counsel of the defendant, and what are the facts expected to be proved in their support.
6. The testimony on the part of the defendant shall be offered.
7. Rebutting testimony may be offered on the part of the State, and of the defendant.

ART. 581. The Court shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appear that it is necessary to a due administration of justice.

ART. 582. At the request of either party, the witnesses on both sides may be sworn and placed in the custody of an officer, and removed out of the court-room to some place where they cannot hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under rule.

ART. 583. When witnesses are placed under rule, those summoned for the prosecution may be kept separate from those summoned for the defence; or they may be all kept together, as the Court shall direct.

ART. 584. Witnesses, when under rule, shall be attended by an officer, and all their reasonable wants provided for, unless the Court in its discretion direct that they be allowed to go at large.

ART. 585. When a criminal cause is to be argued the order of argument may be regulated by the presiding Judge;

but in all cases, the State's counsel shall have the right to make the concluding address to the jury.

ART. 586. In prosecutions for felony the Court shall never restrict the argument to a less number of addresses than two on each side.

ART. 587. Where two or more defendants are jointly prosecuted they may sever on the trial, at the request of either.

ART. 588. The District Attorney may at any time dismiss a prosecution, as to one or more defendants, jointly indicted with others ; and the person so discharged, may be introduced as a witness by either party.

ART. 589. When it is apparent that there is no evidence against a defendant, in any case where he is jointly prosecuted with others, the Jury may be directed to find a verdict as to such defendant ; and if they acquit, he may be introduced as a witness in the case.

ART. 590. Where it appears in the course of a trial that the Court has no jurisdiction of the offence, or that the facts charged in the indictment do not constitute an offence, the Jury shall be discharged.

ART. 591. If the want of jurisdiction arises from the fact that the defendant is not liable to prosecution in the county where the indictment was presented, the Court may, in cases of felony, order the defendant into custody for a reasonable length of time, to await a warrant for his arrest from the proper county ; or if the offence be bailable, may require the defendant to enter into recognizance to answer before the proper Court.

ART. 592. In cases of misdemeanor, where it appears on the trial that the Court has no jurisdiction, the defendant shall be discharged.

ART. 593. The Jury are the exclusive Judges of the facts in every criminal cause, but not of the law in any case.—They are bound to receive the law from the Court, and be governed thereby.

ART. 594. After the argument of any criminal cause has been concluded, the Judge shall deliver to the Jury a written charge, in which he shall distinctly set forth the law applicable to the case; but he shall not express any opinion as to the weight of evidence, nor shall he sum up the testimony. This charge shall be given in all cases of felony, whether asked or not.

ART. 595. It is beyond the province of a Judge sitting in criminal causes to discuss the facts or use any argument in his charge, calculated to rouse the sympathy or excite the passion of a Jury. It is his duty to state plainly the law of the case.

ART. 596. After or before the charge of the Court to the Jury, the counsel on both sides may present written instructions, and ask that they be given to the Jury. The Court shall either give or refuse these charges, with or without modification, and certify thereto; and when the Court shall modify a charge it shall be done in writing and in such manner to clearly show what the modification is.

ART. 597. The general charge given by the Court, as well as those given or refused at the request of either party, shall be certified by the Judge, and, in case of appeal, constitute a part of the record of the cause.

ART. 598. In criminal actions for misdemeanor the Court is not required to charge the Jury, except at the request of the counsel on either side; but, when so requested, shall give or refuse such charges, with or without modification, as are asked in writing.

ART. 599. No verbal charge shall be given in any case whatever, except in cases of misdemeanor; and then only by consent of the parties.

ART. 600. When charges are asked, the Judge shall read to the Jury only such as he gives.

ART. 601. If the Jury request it, a copy of the charges given shall be taken with them to their room; but in cases where charges have been asked, and some have been given and some refused, the clerk shall copy for them such as were given; and those refused shall in no case be given to the Jury.

ART. 602. Whenever it appears by the record in any criminal action, taken to the Supreme Court upon appeal by the defendant, that the instructions given to the Jury were verbal, (except where so given by consent in a case of misdemeanor,) or that the District Judge has departed from any of the requirements of the eight preceding Articles, the judgment shall be reversed, provided it appears by the record that the defendant excepted to the order or action of the Court at the time of the trial.

ART. 603. On the trial of any criminal action, the defendant, by himself or counsel, may tender his bill of exceptions to any decision, opinion, order or charge of the Court; and the Judge shall sign such bill of exceptions, under the rules prescribed in civil suits, in order that such decision, opinion, order or charge may be revised upon appeal to the Supreme Court.

ART. 604. A statement of the facts in a criminal action shall be agreed upon by the District Attorney and the defendant or his counsel; and when they fail to agree, the same shall be made out and certified as directed in civil suits. In preparing a statement of facts, the rules in civil suits shall apply, as to the manner and form of preparing and sending up the same.

ART. 605. After a Jury has been sworn and impanelled to try any case of felony, they shall not be permitted to separate until they have returned a verdict, unless by permission of the Court, with the consent of the District Attorney and the defendant, and in charge of an officer.

ART. 606. It is the duty of the Sheriff to provide a suitable room for the deliberation of the Jury, in all criminal cases, and to supply them with such necessary food and lodging as he can obtain; but no spirituous, vinous or malt liquor, of any kind, shall be furnished them.

ART. 607. The Sheriff shall take care that no person converses with a juror after he has been impanelled to try a criminal action, except in the presence and by permission of the Court.

ART. 608. In order to supply all the reasonable wants of

the Jury, and for the purpose of keeping them together and preventing intercourse with any other person, the Sheriff shall see that one or more bailiffs are constantly in attendance upon them.

ART. 609. No officer who is in attendance upon the Jury, shall be permitted to be in the room with them while they have a case under consideration. The officer, however, shall always remain sufficiently near to answer to any call made upon him by the Jury.

ART. 610. The Jury may take with them, on retiring to consider of their verdict, all the original papers in the cause, and any papers used as evidence.

ART. 611. The Jury in all cases shall appoint one of their body foreman, in order that their deliberations may be conducted with regularity and order.

ART. 612. When the Jury wish to communicate with the Court, they shall make their wish known to the Sheriff, who shall inform the Court thereof, and they may be brought into the court house.

ART. 613. When a Jury comes into the court house, for the purpose of communicating with the Judge, they shall, through their foreman, state their object.

ART. 614. The Jury, after having retired, may ask further instruction of the Judge touching any matter of law, which shall be given them in writing; but no charge shall be given, except upon the particular point on which it is asked.

ART. 615. If the Jury disagree as to the statement of any particular witness, they may, upon applying to the Court, have such witness again brought upon the stand, and he shall be directed by the Judge to detail his testimony in respect to the particular point of disagreement, and no other; and he shall be further instructed to make his statement in the language used upon his examination as nearly as he can.

ART. 616. If any Juror has knowledge of a fact connected with the cause on trial, it is his duty to make it known before the cause is finally submitted. Should he fail to do

this, he may come into the Court with the other Jurors, after their retirement, and shall be sworn as a witness and give his testimony.

ART. 617. In every case of felony, the defendant shall be present in the court when any such proceeding is had, as mentioned in the three next preceding Articles. His counsel shall also be called. In cases of misdemeanor, the defendant need not be personally present.

ART. 618. If, after the retirement of the Jury, any one of them become so sick as to prevent the continuance of his duty, or any accident or circumstance occur to prevent their being kept together, the Jury may be discharged.

ART. 619. The Jury may be discharged after the cause is submitted to them, when they cannot agree, and both parties consent to their discharge, or where they have been kept together for such time as to render it altogether improbable they can agree; in this latter case, the Court, in its discretion, may discharge them.

ART. 620. A final adjournment of the Court, before the Jury have agreed upon a verdict, discharges them.

ART. 621. In all the cases enumerated in Articles 618, 619 and 620, where the Jury is discharged without giving a verdict, the cause may be again tried at the same or another term.

ART. 622. The Court may, during the retirement of the Jury, proceed to any other business and adjourn from time to time, but shall be deemed open for all purposes connected with the case before the Jury.

CHAPTER V.

OF THE VERDICT.

ARTICLE 623. When the Jury have agreed upon a verdict, they shall be brought into Court by the proper officer ; and if, when asked, they answer that they have agreed, the verdict shall be read aloud by the clerk ; and if in proper form, and no Juror dissents therefrom, and neither party requests to have the Jury polled, the verdict shall be entered upon the minutes of the Court.

ART. 624. It is the right either of the State or of the defendant, to have the Jury polled, which is done by calling separately the name of each Juror and asking him if it is his verdict. If all, when asked, answer in the affirmative, the verdict shall be entered upon the minutes ; but if any Juror answer in the negative, the Jury shall retire again to consider of their verdict.

ART. 625. In cases of felony, the defendant must be present when the verdict is read, unless he escape after the commencement of the trial of the cause ; but in cases of misdemeanor it may be received and read in his absence.

ART. 626. The verdict, in every criminal action, must be general ; where there are special pleas upon which the Jury are to find, they must say in their verdict that the matters alleged in such pleas are either true or untrue; where the plea is not guilty, they must find that the defendant is either "guilty" or "not guilty;" and in addition thereto they shall assess the punishment in all cases where the same is not absolutely fixed by law, to some particular penalty.

ART. 627. If the Jury find a verdict which is informal their attention shall be called to it ; and, with their consent, the verdict may, under the direction of the Court, be reduced to proper form.

ART. 628. If the Jury refuse to have the verdict altered, they shall again retire to their room to deliberate, unless it manifestly appear that the verdict is intended as an acquittal; and in that case, the judgment shall be rendered accordingly, discharging the defendant.

ART. 629. In every case of acquittal, judgment shall be entered immediately upon the verdict discharging the defendant. But in case of a conviction for a felony, no judgment shall be entered on the verdict, until the expiration of the time allowed for making a motion for a new trial, or in arrest of judgment.

ART. 630. Where a prosecution is for an offence consisting of different degrees, the Jury may find the defendant not guilty of the higher degree, (naming it,) but guilty of any degree inferior to that charged in the indictment.

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ART. 631. The following offences include different degrees :

1. Murder, which includes manslaughter and negligent homicide of the first and second degree.
2. Maiming, which includes disfiguring, wounding, aggravated assaults and batteries, and simple assaults and batteries.
3. Arson, which includes every malicious burning made penal by law.
4. Burglary, which includes every species of house-breaking and of theft from a house.
5. Theft, which includes all unlawful acquisitions of personal property, punishable by the Penal Code.
6. Every offence against the person includes within it assaults with intent to commit such offence, when such assault is a violation of the penal law.
7. Every offence includes within it an attempt to commit the offence, when such attempt is made penal by law.

ART. 632. Where several defendants are tried together, the Jury may convict such of the defendants as they deem guilty and acquit others.

ART. 633. Where the Jury, on the trial of several defendants, agree to a verdict as to one or more, and cannot agree as to others, they may find a verdict as to those in regard to whom they agree, and judgment shall be rendered accordingly; and the case, as to the rest, may be tried by another Jury.

ART. 634. When a verdict of guilty is rendered in any case of felony, the defendant shall remain in custody to await the judgment of the Court thereon.

ART. 635. In all cases of acquittal, the defendant shall be immediately discharged, unless he is held in custody on some other criminal accusation.

ART. 636. When the defendant is acquitted on the ground of insanity, the Jury shall so state in their verdict.

ART. 637. When a Jury has been impanelled to assess the punishment upon a plea of "guilty," they shall say in their verdict what the punishment is which they assess; but where the Jury are of opinion that a person pleading guilty is insane, they shall so report to the Court, and an issue as to that fact shall be tried before another Jury; and if upon such trial it be found that the defendant is insane, such proceedings shall be had as are directed in Chapter II, Title VIII, Part III, of this Code.

CHAPTER VI.

OF EVIDENCE IN CRIMINAL ACTIONS.

§ I.

General Rules.

ARTICLE 638. The rules of evidence known to the common law of England, both in civil and in criminal cases, shall govern in the trial of criminal actions in this State, except where they are in conflict with the provisions of this Code or of some Statute of the State.

ART. 639. The rules of evidence prescribed by the Statute Law of this State in civil suits, shall, so far as applicable, govern also in criminal actions when not in conflict with the provisions of this Code or of the Penal Code.

ART. 640. A defendant in a criminal cause is presumed to be innocent until his guilt is established by legal evidence; and in case of reasonable doubt as to his guilt he is entitled to be acquitted.

ART. 641. Where a defendant is prosecuted for an offence which includes within it lesser degrees of crime, he may, if the evidence be sufficient, be convicted of any of the lower degrees included within the higher.

ART. 642. If a defendant, prosecuted for an offence which includes within it lesser degrees, be convicted of an offence lower than that for which he is indicted, and a new trial be granted him, or the judgment be arrested for any cause other than the want of jurisdiction, the verdict upon the first trial shall be considered an acquittal of the higher offence; but he may upon a second trial be convicted of the same offence of which he was before convicted, or any other inferior thereto.

ART. 643. The Jury in all cases are the exclusive judges of the facts proved, and of the weight to be given to the testimony, except where it is provided by law that proof of any particular fact is to be taken as either conclusive or presumptive proof of the existence of another fact, or where the law directs that a certain degree of weight is to be attached to a certain species of evidence.

§ II.

Of Persons who may Testify.

ARTICLE 644. The following persons only are incompetent to testify in criminal actions :

1. Insane persons who are in an insane condition of mind at the time when they are offered as witnesses, or who were in that condition when the events happened of which they are called to testify.

2. Children or other persons who, after being examined by the Court, appear not to possess sufficient intellect to re-

late transactions with respect to which they are interrogated, or who do not understand the obligation of an oath.

3. A slave or free person of color shall not testify, except where the prosecution is against a person who is a slave or free person of color.

ART. 645. The Court may, upon suggestion made, or of its own option, interrogate a person who is offered as a witness, for the purpose of ascertaining whether he is competent to testify, according to the rules laid down in the preceding Article, or any other Article of this Code.

ART. 646. All other persons except those enumerated in the preceding Article, whatever may be the relationship between the defendant and witness, are competent to testify, except that an Attorney at law shall not disclose a communication made to him by his client during the existence of that relationship.

ART. 647. Neither husband or wife shall, in any case, testify as to communications made by one to the other while married ; nor shall they, after the marriage relation ceases, be made witnesses as to any such communication made while the marriage relation subsisted, except in a case where one or the other is prosecuted for an offence, and a declaration or communication made by the wife to the husband, or by the husband to the wife, goes to extenuate or justify an offence for which either is on trial.

ART. 648. No rule of the common law which excludes a witness on account of the existence of any particular relationship to the defendant, as of husband and wife, shall have any force, except where it is in express accordance with the provisions of this Code or of some other Statutory Law of the State. The husband and wife can in no case testify against each other, except in a criminal prosecution for an offence committed by one against the other ; but they may, in all criminal prosecutions, be witnesses for each other.

ART. 649. No witness is incompetent to testify on account of his having any particular faith upon religious subjects, provided he believes in the existence of a Supreme Being.

ART. 650. The Judge of the Court trying an offence is a competent witness for either the State or defendant, and may be sworn upon the trial. But in such case it is in his discretion to order the trial to be postponed and to take place before some other Judge.

ART. 651. When it is proposed to offer the testimony of a Judge, in a cause pending before him, he is not required to testify if he declares that there is no fact within his knowledge important in the cause.

ART. 652. When the Judge of a Court is offered as a witness, the oath may be administered to him by the Clerk.

ART. 653. A conviction cannot be had upon the testimony of an accomplice, unless corroborated by other evidence tending to connect the defendant with the offence committed; and the corroboration is not sufficient if it merely shows the commission of the offence.

§ III.

Evidence as to Particular Offences.

ARTICLE 654. No person can be convicted of treason, except upon the testimony of at least two witnesses to the same overt act, or upon his own confession in open Court.

ART. 655. Evidence shall not be admitted, in a prosecution for treason, as to an overt act not expressly charged in the indictment. Nor shall any person be convicted under an indictment for treason unless one or more overt acts are expressly charged therein.

ART. 656. In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement be not fulfilled, the Court shall instruct the Jury to render a verdict of acquittal, and they are bound by the instruction.

ART. 657. In trials for perjury, no person can be convicted, except upon the testimony of two credible witnesses, or of one credible witness, with strong corroborating circumstances.

ART. 658. In trials for forgery, the person whose name is alleged to have been forged is a competent witness.

ART. 659. In trials for forgery, it need not be proved that the defendant committed the act with intent to defraud any particular person. It shall be sufficient to prove that the forgery was in its nature calculated to injure or defraud any of the sovereignties, bodies corporate or politic, officers or persons named in Article 439 of the Penal Code in defining forgery.

§ IV.

Of Dying Declarations and of the Confessions of the Defendant.

ARTICLE 660. The dying declarations of a deceased person may be offered in evidence either for or against a defendant charged with the homicide, under the restrictions hereafter provided. To render the declarations of the deceased competent evidence, it must be satisfactorily proved :

1. That at the time of making such declarations he was conscious of approaching death, and believed there was no hope of recovering.
2. That the declaration was voluntarily made, and not through the persuasion of any person.
3. That such declaration was not made in answer to interrogatories calculated to lead the deceased to make any particular statement.
4. That he was of sane mind at the time of making the declaration.

ART. 661. The confession of a defendant may be used in

evidence against him, if it appear that the same was freely made without compulsion or persuasion, under the rules hereafter prescribed.

ART. 662. The confession shall not be used, if, at the time it was made, the defendant was in jail or other place of confinement, nor while he is in custody of an officer, unless such confession be made in the voluntary statement of the accused, taken before an examining Court in accordance with law, or be made voluntarily after having been first cautioned that it may be used against him.

ART. 663. The confession of a slave shall never be used in evidence against him, when made after whipping or other chastisement has been inflicted or threatened, on account of the offence of which he is accused.

§ V.

Miscellaneous Provisions.

ARTICLE 664. When part of an act, declaration or conversation, or writing, is given in evidence by one party, the whole on the same subject may be enquired into by the other, as, when a letter is read, all other letters on the same subject, between the same parties, may be given. And when a detailed act, declaration, conversation or writing is given in evidence, any other act, declaration or writing, which is necessary to make it fully understood, or to explain the same, may also be given in evidence.

ART. 665. When an instrument is partly written and partly printed, the written shall control the printed portion, when the two are inconsistent.

ART. 666. When a subscribing witness denies or does not recollect the execution of an instrument to which his name appears, its execution may be proved by other evidence.

ART. 667. It is competent, in every case, to give evidence

of handwriting by comparison, made by experts or by the Jury ; but proof by comparison only shall not be sufficient to establish the handwriting of a witness who denies his signature.

ART. 668. The rule that a party introducing a witness shall not attack his testimony is so far modified as that any party, when facts stated by the witness are injurious to his cause, may attack his testimony in any other manner, except by proving the bad character of the witness.

TITLE VI.

OF PROCEEDINGS AFTER VERDICT.

CHAPTER I.

OF NEW TRIALS.

ARTICLE 669. A new trial is the rehearing of a criminal action, after verdict, before another Jury.

ART. 670. A new trial can in no case be granted where the verdict has been rendered for the defendant.

ART. 671. A new trial must be applied for within two days after the verdict is returned ; but for good cause shown, the Court, in cases of felony, may allow the application to be made at any time before the adjournment of the term at which the verdict was found. When a Court adjourns before the expiration of two days from the return of verdict, the motion shall be made before the adjournment.

ART. 672. New trials, in cases of felony, shall be granted for the following causes, and for no other :

1. Where the defendant has been tried in his absence or has been denied counsel.
2. Where the Court has misdirected the Jury as to the law, or has committed any other material error calculated to injure the rights of the defendant.
3. Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the Jurors.
4. Where a Juror has received a bribe to convict, or has been guilty of any other corrupt conduct.
5. Where any material witness of the defendant has, by force, threats or fraud, been prevented from attending the Court, or where any written evidence, tending to establish the innocence of the defendant, has been intentionally destroyed or removed, so that it could not be produced upon the trial.
6. Where new testimony material to the defendant has been discovered since the trial. A motion for a new trial based on this ground shall be governed by the same rules as those which regulate civil suits.
7. Where the Jury, after having retired to deliberate upon a case, have received other testimony ; or where a Juror has conversed with any person in regard to the case ; or where any Juror, at any time during the trial or after retiring, may have become so intoxicated as to render it probable his verdict was influenced thereby. But the mere drinking of liquor by a Juror shall not be sufficient ground for granting a new trial.
8. Where, from the misconduct of the Jury, the Court is of opinion that the defendant has not received a fair and impartial trial ; and it shall be competent to prove such misconduct by the voluntary affidavit of a Juror; and a verdict may, in like manner, in such cases, be sustained by such affidavit.
9. Where the verdict is contrary to law and evidence. A verdict is not contrary to the law and the evidence, within the meaning of this provision, where the defendant is found guilty of an offence of inferior grade to, but of the same nature as, the offence proved.

ART. 673. If a new trial be refused, a statement of facts may be drawn up and certified, and placed in the record as in civil suits. Where the defendant has failed to move for a new trial, he is nevertheless entitled, if he appeals, to have a statement of the facts certified and sent up with the record.

ART. 674. The effect of a new trial is to place the cause in the same position in which it was before any trial had taken place. The former verdict shall be regarded as no presumption of guilt, nor shall it be alluded to in the argument.

CHAPTER II.

ARREST OF JUDGMENT.

ARTICLE 675. A motion in arrest of judgment is a suggestion to the Court on the part of the defendant that judgment cannot be legally rendered upon the verdict against him. The motion may be made orally or in writing; and the record must show the grounds of the motion.

ART. 676. The motion must be made within two days after the verdict is returned; or if the Court adjourn before the expiration of two days from such return of verdict, then it may be made at any time before judgment is entered.

ART. 677. The Court may, for good cause shown, hear a motion in arrest of judgment at any time.

ART. 678. A motion in arrest of judgment shall be granted upon any ground which would be good upon exception to an indictment or information, for any substantial defect therein.

ART. 679. No judgment shall be arrested for want of form.

ART. 680. The effect of arresting a judgment is to place the defendant in the same position he was before the indictment or information was presented. And if the Court be satisfied from the evidence, that he may be convicted upon a proper indictment or information, he shall be remanded into custody, or bailed, as the case may require.

ART. 681. Where the Court is not satisfied from the proof that upon a proper indictment or information the defendant may be convicted, he shall be discharged.

CHAPTER III.

JUDGMENT AND ITS INCIDENTS.

§ I.

Judgment in Cases of Felony.

ARTICLE 682. If a new trial is not granted, nor the judgment arrested, the judgment of the Court, in cases of felony, shall be entered, and sentence pronounced in presence of the defendant, at any time after the expiration of the time allowed for making the motion for a new trial, or the motion in arrest of judgment.

ART. 683. In cases of felony, where an appeal is taken, sentence shall not be pronounced, but shall be suspended until the decision of the Supreme Court has been received.

ART. 684. In cases where a verdict of conviction takes place so late in the term of the Court as not to allow the time given by Articles 671 and 676 for making a motion for a new trial, or in arrest of judgment, the judgment may be entered and sentence pronounced at any time before the Court finally adjourns; provided that in every case at least six hours shall be allowed for making either of these motions.

ART. 685. If, at the time a verdict is returned into Court, there be less than six hours remaining before the Court by law must adjourn, it shall be lawful and shall be the duty of the District Judge, to sit during the whole of Saturday night and Sunday, for the purpose of enabling the defendant to move for a new trial or in arrest of judgment, and prepare his cause for the Supreme Court. This Article shall not require the District Judge to sit longer than six hours after verdict rendered, if a motion for a new trial, or in arrest of judgment, shall not have been filed.

ART. 686. Where, from any cause whatever, a verdict of conviction has been returned, and there is a failure to enter judgment and pronounce sentence during the term, the judgment may be entered and sentence pronounced at the next succeeding term of the Court, unless a new trial has been granted, or the judgment arrested, or an appeal has been taken.

ART. 687. Before pronouncing sentence in a case of felony, the defendant shall be asked whether he has any thing to say why judgment should not be rendered and sentence pronounced against him.

ART. 688. The only reasons which can be shown on account of which sentence cannot be passed, are :

1. That the defendant has received a pardon from the proper authority; on the presentation of which, legally authenticated, he shall be discharged.

2. That the defendant is insane; and if sufficient proof be shown to satisfy the Court that the allegation is well founded, no sentence shall be pronounced. And where there is sufficient time left, a Jury may be impanelled to try the issue. Where sufficient time does not remain, the Court shall order the defendant to be confined safely until the next term of the

Court, and shall then cause a Jury to be impannelled to try such issue.

3. Where there has not been a motion for a new trial, or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions, and either or both motions may be immediately entered and disposed of, although more than two days may have elapsed since the rendition of the verdict.

4. When a person who has been convicted of felony escapes between verdict and judgment, or between the time of rendering the judgment in the District Court and sentence thereon, after affirmance of the same in the Supreme Court, and an individual supposed to be the same has been arrested, he may, before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a Jury as to his identity.

ART. 689. Where the sentence of death is pronounced against a convict, a time shall be set for the execution of the same not earlier than thirty days from the date of the sentence.

ART. 690. The Clerk of the District Court shall issue a warrant for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offence and the judgment of the Court, the time fixed for its execution, and the manner in which it is to be executed.

§ II.

Judgment in Cases of Misdemeanor.

ARTICLE 691. The judgment in cases of misdemeanor may be rendered in the absence of the defendant.

*amend.
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ART. 692. When the defendant has not given bail, and is not in custody, the District Attorney may, in case a pecuniary fine has been imposed, have a writ of capias issued, and the Sheriff shall execute the same by placing the defendant in jail until

the fine is paid, from which confinement, however, he may be released after remaining in Jail the length of time prescribed in Article 696, upon making oath before the Sheriff that he is unable to pay.

ART. 693. When the punishment assessed by the Jury is a pecuniary fine only, the defendant, if in custody, may be discharged therefrom:

1. Upon the payment of the fine and costs.
2. Upon giving security, in open Court, for the payment of the fine and costs on or before the next term of the Court. In such case the surety shall acknowledge himself bound for the amount of the fine and costs, of which an entry shall be made on the minutes of the Court, and shall have the effect of a judgment against such surety, and execution may accordingly be issued against both principal and surety, and be collected as in civil suits.

ART. 694. If the defendant, being in custody, refuse to give security, he may be committed to Jail, to remain until the fine and costs are paid, unless he make oath that he is unable to pay the fine, in which case he shall be committed to Jail for a term not exceeding ten days; and if the fine exceeds twenty dollars, then one additional day for every three dollars over twenty to which the fine may amount.

ART. 695. When the defendant is not in custody, but has given bail, the District Attorney may, in any case of misdemeanor, take a forfeiture of his recognizance or bail bond, or he may, in case of a mere pecuniary fine, have execution issued against the defendant, to be collected and returned as in civil actions.

ART. 696. Where the punishment imposed, or any part thereof, is imprisonment, and the defendant is not in custody, a capias may be issued to take the defendant, and the Sheriff shall execute the same by placing the defendant in Jail, to remain the length of time fixed by the judgment, and execution shall issue to collect the costs and the fine, if any has been imposed, in addition to the imprisonment.

ART. 697. Where a defendant makes his escape from custody, either before or after verdict, a capias shall be issued for his arrest.

CHAPTER IV.

EXECUTION OF JUDGMENTS.

§ I.

Collection of Pecuniary Fines.

ARTICLE 698. Where a defendant is committed to the custody of the Sheriff, or taken under a capias, for the purpose of enforcing the collection of a pecuniary fine, it is the duty of the Sheriff to place him in Jail.

ART. 699. A copy of the judgment of the Court imposing the fine, certified to by the Clerk of the District Court, is sufficient authority for the Sheriff to commit a defendant to the Jail of his county, in cases where, by the judgment, it is directed that he be committed until the fine and costs be paid.

ART. 700. Where it is directed in the judgment of the Court that a capias issue to enforce the collection of a fine, the Clerk of the District Court shall issue the writ to the Sheriff, reciting the existence and character of the judgment, and commanding the Sheriff to take the body of the defendant, and hold him in custody until the fine and costs are paid. This writ is sufficient authority to justify the commitment of the defendant to Jail.

ART. 701. In cases where an execution is ordered to be issued in a criminal cause, to enforce a judgment, it is the duty of the Sheriff to collect the same as in civil suits.

ART. 702. All recognizances, bail bonds and undertakings of any kind, whereby a party becomes bound to pay money to the State, shall be deemed payable in gold or silver ; and all fines and forfeitures of a pecuniary character shall be collected in that currency only.

ART. 703. The Sheriff shall make a written report, under oath, of all money collected by him, under execution or other

process, in criminal actions, and file the same at each term of the District Court.

§ II.

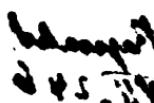
Enforcing the Judgment in Misdemeanors where the Penalty is Imprisonment, and in Felonies less than Capital.

ARTICLE 704. When, by the judgment of the Court, a defendant is to be imprisoned in Jail, as the penalty, or a part of the penalty of the offence, a copy of the judgment is sufficient to authorize the Sheriff to execute the same, by such imprisonment of the defendant.

ART. 705. When a writ of habeas corpus is directed to be issued for the apprehension and commitment of a person convicted of a misdemeanor, the penalty of which is imprisonment in Jail, the writ shall recite the judgment, and command the Sheriff to place the defendant in Jail, to remain the length of time therein fixed, and this writ shall be sufficient to authorize the Sheriff to enforce such judgment.

ART. 706. When the defendant has been sentenced to the Penitentiary, a certified copy of the judgment shall be sufficient to authorize the Sheriff to convey such convict and deliver him to the proper officer of the same.

ART. 707. Prisoners shall be conveyed to the Penitentiary in the manner, and under the rules prescribed in the Act of March 13, 1848, entitled "An Act to establish a State Penitentiary," as the same is amended and set forth in the Penal Code.



§ III.

Execution of the Penalty of Death.

ARTICLE 708. When sentence of death is to be executed, a warrant shall be issued by the Clerk of the District Court, directed to the Sheriff of the proper county, which may be carried into effect, at any time after eleven o'clock and before sunset, on the day stated in such warrant.

ART. 709. The sentence of death shall be executed by hanging the convict by the neck until he is dead.

ART. 710. Where there is a Jail in the county, and it is so constructed that a gallows can be erected therein, the execution of the sentence of death shall take place within the walls of the Jail.

ART. 711. Where the sentence of death is executed within the walls of the County Jail, the Sheriff shall notify any number of physicians or surgeons, not exceeding six, any number of Justices of the Peace of his county, not exceeding four, and any number of freeholders in the county, not exceeding six, any or all of whom may be present, together with such deputies of the Sheriff as he may require to be in attendance when the penalty of death is executed.

ART. 712. The Sheriff shall comply with any reasonable request of the convict ; and where the execution takes place within the walls of the County Jail, shall permit such persons to be present (not exceeding five) as he may name.

ART. 713. No torture or ill treatment, or unnecessary pain shall be inflicted upon a prisoner to be executed under sentence of the law.

ART. 714. The County Court of each county shall so provide as that the Jails of their respective counties may be fitted for the execution of the penalty of death, in the manner herein provided.

ART. 715. The Sheriff may, when he supposes there will

be a necessity, order such number of citizens of his county, or any military company, to aid in preventing the rescue of a prisoner, or to prevent persons not authorized to be present from intruding themselves within the place of execution.

ART. 716. The body of a convict shall be buried at the expense of the county, unless demanded by his relatives or friends, in which case it shall be given to them, and shall never, unless by consent of the convict himself, before execution, be delivered to any person for dissection.

ART. 717. The Sheriff shall immediately return the warrant, stating therein :

1. The fact, time, place and mode of execution.
2. If the execution do not take place within the Jail, the return shall state that there is no Jail, or that it is not so constructed that a gallows can be erected therein.
3. If the execution take place within the Jail, the return shall state the names of the physicians, Justices of the Peace, and freeholders notified to be present; and the names of the persons present, if any, by request of the convict.
4. If the execution do not take place within the Jail, the return shall state the names of five freeholders of the county who were present.
5. That the body of the convict was buried, or delivered to his relatives or friends, or to a physician or surgeon, by consent of the convict.

TITLE VII.

OF APPEALS.

ARTICLE 718. An appeal may be taken from the District to the Supreme Court by the State, in the following cases, and in no others:

1. When the District Court sustains an exception of the defendant to the indictment or information.
2. Where the District Court sustains a motion of the defendant in arrest of judgment.

ART. 719. An appeal may be taken by the defendant in every case where judgment of conviction has been rendered against him in the District Court, or where such a Court, or a Judge thereof, or a Judge of the Supreme Court, has decided against an application of the defendant under habeas corpus.

ART. 720. Where the State appeals no security can be required.

ART. 721. Where the defendant appeals in any case of felony, he shall be committed to Jail until the decision of the Supreme Court can be made; and if the Jail of the county is unsafe, or there be no Jail, the Judge of the District Court may, either in term time or in vacation, order the prisoner to be committed to the Jail of the nearest county in his district which is safe.

ART. 722. When the defendant appeals in any case of misdemeanor, he shall be committed to Jail, unless he enter into recognizance to appear before the District Court, to abide the judgment of the Supreme Court.

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ART. 723. The defendant shall also be required, where the State appeals, to enter into recognizance to appear before the District Court to answer the criminal accusation against him, in case the judgment of the District Court be reversed, but when the defendant makes oath that he is unable to give bail, he shall be discharged upon his own recognizance, which may be forfeited and enforced as directed in Article 451, with respect to witnesses.

ART. 724. An appeal on behalf of the State must be taken so soon as the order is made which is appealed from.

ART. 725. An appeal may be taken by the defendant at any time during the term of the Court at which the conviction is had.

ART. 726. An appeal is taken by giving notice thereof in open Court, and having the same entered of record.

ART. 727. The effect of an appeal is to suspend and arrest all further proceedings, until the judgment of the Supreme Court has been received by the District Court.

ART. 728. Where the defendant fails to appeal until after sentence has been pronounced, the appeal shall nevertheless be allowed if demanded, and has the effect of supereeding the execution of the sentence and all other proceedings, as fully as if taken at the proper time.

ART. 729. It is the duty of the Clerk of the District Court to prepare, immediately after the adjournment of each term of Court a transcript in every case where an appeal is taken ; which transcript shall contain all the proceedings had in the case. The transcripts in criminal cases shall be made out before those in civil actions decided at the same term.

ART. 730. The transcript of the record in cases of misdemeanor must be delivered to the party appealing, or his counsel, when the defendant appeals, or to the District Attorney, or any counsel associated with him, when the State appeals. But if not applied for before the twentieth day before the commencement of the term of the Supreme Court to which the appeal is returnable, the Clerk shall transmit the same by mail, paying the postage thereon, to the Clerk of the Supreme Court.

ART. 731. Transcripts of record in all cases of felony shall, so soon as prepared, be sent by mail, addressed to the Clerk of the Supreme Court, at the place where the session of the Supreme Court is held, to which the appeal is returnable. The District Clerk shall deposit each transcript so addressed and securely enveloped, and shall pay the postage upon the same ; and the amount paid shall be taxed as a part of the costs in each case.

ART. 732. The District Clerk shall immediately after the adjournment of the Court; at which appeals in criminal actions may have been taken, make out a certificate under his seal of office, exhibiting a list of all such causes which have been de-

cided, and in which either the State or defendant has appealed. This certificate shall show the style of the cause upon the docket—the offence of which the defendant stands accused—the day on which judgment was rendered, and the day on which the appeal was taken—which certified list he shall transmit, post paid, to the Clerk of the Supreme Court at the proper place.

ART. 733. The Clerk of the Supreme Court shall file the certificate provided for in the preceding Article, and notify the Attorney General that the same has been received.

ART. 734. When it appears by such certificate that an appeal has been taken by the defendant in a criminal action for misdemeanor, and the transcript is not filed within the time required by law for filing transcripts in civil actions, such cause may be entered upon the docket on motion of the Attorney General, and the judgment of the District Court shall be affirmed.

ART. 735. When it appears by the certificate of the Clerk of the District Court, that an appeal has been taken by the defendant in any criminal action for felony, and no transcript thereof is filed in the Supreme Court within the time required by law, the Clerk of the Supreme Court shall notify the Attorney General of the same, and shall also immediately, by mail, inform the Clerk of the proper District Court that such transcript has not been received.

ART. 736. No judgment of the District Court in a case of felony shall be affirmed unless the record of the cause is before the Supreme Court, and it is the duty of the Clerk of the Supreme Court, to notify the counsel of the accused, through the mail, if he knows the residence of such counsel, whenever there has been a failure to receive the transcript of record in any case of felony.

ART. 737. The Clerk of the District Court, when informed that a transcript has not been received by the Clerk of the Supreme Court, shall immediately prepare and transmit another, as directed in Article 731.

ART. 738. When an appeal is taken by the State, and the transcript of the record is not filed in the Supreme Court

within the time limited for filing transcripts in civil actions, the defendant's counsel may suggest the facts to the Court, and upon exhibiting the certificate of the District Clerk that such appeal was taken by the State, the cause shall be docketed and the judgment of the District Court affirmed, unless good cause be shown why the transcript has not been filed.

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ART. 739. The Clerk of the Supreme Court shall receive, file and docket appeals in criminal actions, under the same rules which govern appeals in civil actions, except that it shall be in the discretion of the Court, in cases of felony, to permit a transcript to be filed at any time during the term to which an appeal is taken.

ART. 740. The defendant to a criminal action need not be personally present upon the hearing of his cause in the Supreme Court, but he may appear in person in cases where by law he is not committed to jail upon appeal.

ART. 741. The Court shall hear and determine appeals in criminal actions at the earliest time it may be done with due regard to the rights of parties and a proper administration of justice.

ART. 742. The judgment in a criminal action, upon appeal, may be wholly reversed and dismissed when brought up by the defendant, or affirmed and dismissed when brought up by the State; the judgment may be reformed and corrected, or the cause may be remanded for further proceedings in the District Court, as the law and the nature of the case may require.

ART. 743. As soon as the judgment of the Supreme Court is rendered, the Clerk shall make out the proper certificate of the proceedings had and judgment rendered, and transmit the same, by mail, to the Clerk of the District Court, or deliver the mandate to the counsel of the defendant when the decision is favorable to the defendant, if requested to do so, unless he be instructed by the Court to withhold the mandate to any particular time.

ART. 744. The Supreme Court may revise the judgment in a criminal action, as well upon the law as upon the facts; but when a cause is reversed for the reason that the verdict

is contrary to the weight of evidence, the same shall in all cases be remanded for a new trial.

ART. 745. The Supreme Court may make rules of procedure, as to the hearing of criminal actions, upon appeal; but in every case at least two counsel for the defendant shall be heard, if they desire it, either by brief or by oral or written argument, or by both, as such counsel shall deem proper.

ART. 746. When the certificate of the judgment and proceedings in the Supreme Court shall be received by the District Clerk, he shall file the same with the original papers of the cause.

ART. 747. In cases where the judgment of the District Court is affirmed upon an appeal by the defendant, if the mandate be received during the session of the District Court, that Court shall proceed to pronounce sentence, in cases of felony, during the term at which the mandate is received.

ART. 748. If the mandate be received in vacation, and the judgment in a case of felony has been affirmed, sentence shall be pronounced during the term of the Court next succeeding the time at which the same was received.

ART. 749. In cases of misdemeanor, where no formal sentence is to be pronounced, no proceedings need be had after filing the mandate in the District Court, but the cause shall stand as it would have stood in case no appeal had been taken, and the recognizance of the defendant may be forfeited, or a capias issued to enforce the punishment adjudged, whether of fine or imprisonment, or both, in the same manner as if no appeal had been taken.

ART. 750. Where the Supreme Court awards a new trial to the defendant, the cause shall stand as it would have stood in case the new trial had been granted by the District Court.

ART. 751. Where the defendant's motion in arrest of judgment was overruled, and it is decided on appeal that the same ought to have been sustained, the cause shall stand as if the motion had been sustained in the District Court, unless the Supreme Court in its judgment direct the cause to be dismissed and the defendant wholly discharged.

ART. 752. If the appeal was taken by the State, from a judgment of the District Court, sustaining an exception to the indictment or information, or sustaining a motion in arrest of judgment, and the judgment is reversed, the cause shall stand as if the exception or the motion in arrest had been overruled by the District Court.

ART. 753. Where the Supreme Court reverses a judgment of the District Court, and directs the cause to be dismissed, the defendant, if in custody, must be discharged; and the Clerk of the Supreme Court shall transmit to the officer having custody of the defendant an order to that effect.

ART. 754. When the defendant appeals from the judgment rendered on the hearing of an application under habeas corpus, a transcript of the proceedings in the cause shall be made out and certified to, together with all the testimony offered, and shall be sent up to the Supreme Court for revision. This transcript, when the proceeding takes place before the District Court in session, shall be prepared and certified by the Clerk thereof, but when had before a Judge of the Supreme Court or of the District Court not in session, the transcript may be prepared by any person under the direction of the Judge and certified by such Judge.

ART. 755. The Supreme Court shall hear the appeal upon the facts and law arising upon the record, and shall enter such judgment and make such orders as the law and the nature of the case may require.

ART. 756. The opinion of a District or Supreme Judge shall not be revised as to any incidental question which may have arisen on the hearing of the application for habeas corpus. The only design of the appeal being to do substantial justice to the party appealing.

ART. 757. Cases of habeas corpus taken to the Supreme Court by appeal shall be heard at the earliest practicable time.

ART. 758. The Supreme Court may make such order relative to the costs in cases of habeas corpus as may seem right, allowing costs and fixing the amount, or allowing no costs at all.

ART. 759. The judgment of the Supreme Court, in appeals under habeas corpus, shall be final and conclusive, and no further application in the same case can be made for the writ. The judgment of the Supreme Court shall be certified by the Clerk thereof to the officer holding the defendant in custody, or, when he is held by any person other than an officer, to the Sheriff of the proper county.

ART. 760. If an officer, holding a person in custody, fails to obey the mandate of the Supreme Court, he is guilty of an offence, and punishable according to the provisions of the Penal Code.

ART. 761. If the appellant, in a case of habeas corpus, be detained by any person other than an officer, the Sheriff shall, upon receiving the mandate of the Supreme Court, immediately cause the person so held to be discharged, and the mandate shall be sufficient authority therefor.

ART. 762. The defendant need not be personally present upon the hearing of an appeal in cases of habeas corpus.

ART. 763. When, by the judgment of the Supreme Court, upon appeal in cases of habeas corpus, the applicant for relief is ordered to give bail, such judgment shall be certified to the officer holding him in custody; and if he be the Sheriff, the bail bond may be executed before him; if any other officer, he shall take the person detained before some Magistrate, who may receive a bail bond, and shall file the same in the District Court of the proper county, and such bond shall have the same force and effect as a recognizance, and may be forfeited and enforced in the same manner.

TITLE VIII.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I.

DEPOSITION OF WITNESSES.

§ I.

When taken.

ARTICLE 764. Whenever an examination takes place in a criminal action before a Magistrate, the defendant may have the deposition of any witness taken by any officer or officers hereafter named in this Chapter; but the State or person prosecuting shall have the right to cross-examine the witnesses, and the defendant shall not use the deposition for any purpose unless he first consent that the entire evidence or statement of the witness may be used against him by the State, on the trial of the case.

ART. 765. Depositions of witnesses may also, at the request of the defendant, be taken in the following cases:

1. When the witness resides out of the State.
2. When the witness is aged or infirm.

Persons authorized to take Depositions, and the manner of taking and returning them.

ARTICLE 766. Depositions of witnesses within the State may be taken by a Supreme or District Judge, or before any two or more of the following officers: the Chief Justice of a county, Notary Public, Clerk of the District Court and Clerk of the County Court.

ART. 767. Depositions of a witness residing out of the State may be taken before the Judge or Chancellor of a Superior Court of law or equity, or before a Commissioner of deeds and depositions for this State, who resides within the State where the deposition is to be taken.

ART. 768. The deposition of a non-resident witness, who may be temporarily within the State, may be taken under the same rules which apply to the taking of depositions of other witnesses in the State.

ART. 769. The rules prescribed in civil cases for taking the deposition of witnesses, shall, as to the manner and form of taking and returning the same, govern in criminal actions, when not in conflict with the requirements of this Code.

ART. 770. The same rules of procedure as to objections to depositions shall govern in criminal actions which are prescribed in civil actions, when not in conflict with this Code.

ART. 771. When the defendant desires to take the deposition of a witness, at any other time than before the examining Court, he shall, by himself or counsel, file with the Clerk of the District Court a statement on oath, setting forth the facts necessary to constitute a good reason for taking the same, and in addition thereto state in his affidavit that he has no other witness whose attendance on the trial can be procured, by whom he can prove the facts he desires to establish by the deposition.

ART. 772. In cases arising under the preceding Article, written interrogatories shall be filed with the Clerk of the District Court, and a copy of the same served on the District Attorney of the proper District, the length of time required for service of interrogatories in civil actions.

ART. 773. In every case where depositions are taken, under commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission ; or, if they cannot certify to the identity of the witness, there shall be an affidavit of some person attached to the deposition proving the identity, and the officer or officers shall certify that the person making the affidavit is known to them and is worthy of credit.

ART. 774. In cases where it is required that two officers shall act in executing a commission to take depositions, the official seal and signature of each shall be attached to the certificate authenticating the deposition.

ART. 775. The deposition of a witness taken before an examining Court may be taken without interrogatories. But whenever a deposition is so taken it shall be done by the proper officer or officers, and there shall be allowed both to the State and the defendant full liberty of cross-examination.

ART. 776. The depositions of witnesses taken before an examining Court may be taken without a commission ; and if such examining Court be held by a Supreme or District Judge, he shall, upon request, proceed to take the depositions of the witnesses.

ART. 777. Where any of the officers, other than a Supreme or District Judge, are called upon to take a deposition before an examining Court, it is their duty to attend and take the same.

ART. 778. A deposition taken in an examining Court shall be sealed up and delivered by the officer or officers, or one of them, to the Clerk of the District Court of the county having jurisdiction to try the offence ; in all other cases the return of depositions may be made as provided for depositions in civil actions.

§ III.

Of reading Depositions in Criminal Actions.

ARTICLE 779. Depositions taken in criminal actions shall not be read, unless oath be made that the witness resides out of the State ; or, that since his deposition was taken, the witness has died ; or that he has removed beyond the limits of the State ; or that he has been prevented from attending the Court through the act or agency of the defendant ; or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony.

ART. 780. When the deposition is sought to be used by the State the oath prescribed in the preceding Article may be made by the District Attorney or any other credible person ; and when sought to be used by the defendant the oath shall be made by him in person.

CHAPTER II.**OF INQUIRY AS TO THE INSANITY OF THE DEFENDANT.**

ARTICLE 781. If it be made known to the Court at any time after conviction, or if the Court has good reason to believe that a defendant is insane, a Jury shall be impanelled to try the issue.

ART. 782. Information to the Court as to the insanity of a defendant may be given by the written affidavit of any respectable person, setting forth that there is good reason to believe that the defendant has become insane.

ART. 783. The Court shall direct the Sheriff to summon twelve men, qualified Jurors, for the purpose of trying the question of insanity.

ART. 784. No special formality is necessary in conducting the proceedings authorized by this Chapter. The Court shall see that the inquiry is conducted in such manner as to lead to a satisfactory conclusion.

ART. 785. In trials of an issue as to the insanity of a defendant each party shall be entitled to six peremptory challenges, and may challenge also for the same causes which are made good ground of challenge on the trial of criminal actions.

ART. 786. The counsel for the defendant has the right to open and conclude the argument upon the trial of an issue as to insanity.

ART. 787. If the defendant has no counsel, the Court shall appoint counsel to conduct the trial for him.

ART. 788. When an inquiry as to the insanity of a defendant takes place, before judgment is rendered, and it is found that the defendant is insane, the judgment shall be suspended until he becomes sane.

ART. 789. Where an inquiry as to insanity has taken place after judgment, and the defendant is found to be insane, the execution of the judgment shall be suspended until he becomes sane.

ART. 790. When, upon the trial of an issue as to insanity, it is found that the defendant is sane, judgment shall be rendered upon the verdict of conviction, as if no such issue had been tried.

ART. 791. When the inquiry takes place after judgment, and the defendant is found to be sane, the execution of the judgment shall follow as if no such inquiry had been made.

ART. 792. It is the duty of each County Court to make provision for the safe keeping and proper treatment of per-

sons who become insane, until a lunatic asylum shall be provided by the State.

ART. 793. Whenever it is found that a defendant is insane, upon inquiry, as directed in this Chapter, the Court shall make an order that he be placed in the charge of the County Court until a lunatic asylum shall be provided by the State.

CHAPTER III.

DISPOSITION OF PROPERTY STOLEN.

ARTICLE 794. When any property alleged to have been stolen comes into the custody of an officer, he must hold it subject to the order of the proper Court or Magistrate.

ART. 795. Upon the trial of any criminal action for theft, or for any other illegal acquisition of property, which is by law a penal offence, the Court before whom the trial takes place shall order the property to be restored to the person appearing by the proof to be the owner of the same.

ART. 796. When an officer seizes property alleged to have been stolen, it is his duty immediately to file a schedule of the same and its value, certifying that the property has been seized by him, and the reason therefor.

ART. 797. Upon examination of a criminal accusation before a Magistrate, if it is proved to the satisfaction of such Magistrate that any person is the true owner of property alleged to have been stolen, and which is in the possession of a peace officer, he may, by written order, direct the property to be restored to such owner.

ART. 798. If the Magistrate have any doubt as to the ownership of the property, he may require of the person claiming to be the owner a bond with security for the re-delivery of the same, in case the property should thereafter be shown not to belong to such claimant, or he may, in his discretion, direct the property to be retained by the Sheriff until further order respecting the possession thereof.

ART. 799. A bond, under the provisions of the preceding Article, shall be taken payable to the Sheriff from whose custody it is received.

ART. 800. If stolen property be not claimed within six months from the conviction of a defendant accused of the theft, the same shall be by the Sheriff sold, for cash, after advertising for ten days, and the proceeds paid into the treasury of the county where the defendant was convicted.

ART. 801. Advertisement, as provided for in the preceding Article, shall be made by posting up a notice on the Courthouse door of the proper county; and the sale shall take place at the county seat and before the Courthouse door.

ART. 802. If the property stolen consist of money, the same shall be paid into the county treasury, if not claimed by the proper owner within six months.

ART. 803. The real owner of the property or money disposed of, as provided in Article 800 and 802, shall have twelve months to present his claim to the County Court to which the money held or realized from the sale has been paid, and if his claim be denied he may sue the County Treasurer, and upon sufficient proof recover the same.

ART. 804. If the property stolen be a written instrument of any description, and is not claimed before the trial of the cause, the same shall be filed by the Clerk of the District Court, subject to the claim of any person who may afterwards establish his right thereto, and any person claiming such written instrument shall, by advertisement in a newspaper published in the proper county, or in a newspaper nearest the county seat of such county, for eight successive weeks, give notice of his claim, and may afterwards, at any succeeding term of the Court, establish by proof his right thereto.

ART. 805. All the provisions of this Chapter relating to stolen property apply as well to property acquired in any manner which makes the acquisition a penal offence.

CHAPTER IV.

APPROPRIATION OF FINES AND MONEYS COLLECTED UPON RECOGNIZANCES, BAIL BONDS AND OTHER LIKE UNDERTAKINGS.

ARTICLE 806. Every officer charged with the collection of money, upon forfeited recognizances, bail bonds, and other obligations recovered upon in the name of the State, under the provisions of this Code, shall pay over all money collected to the County Treasurer of the proper county. And all fines collected by virtue of any process issued to the Sheriff from any Court having jurisdiction in criminal actions, shall in like manner be paid over when collected.

ART. 807. All fines and forfeitures of money upon any proceeding in criminal cases, including fines against the defendant and against defaulting witnesses, money recovered upon recognizances, bail bonds, and all other undertakings in a criminal case, whether of a defendant or of a witness, or the sureties of either, and all fines against defaulting Jurors, and for contempts of Court shall be paid into the County Treasury, and shall constitute a fund for the payment, first, of expenses incurred by the county in the keeping of prisoners, and the payment of the expenses of Juries in cases of felony, and, secondly, for the payment of Jurors in attendance upon the Court at each term.

ART. 808. The District Attorney shall be entitled in each case to a fee of five per cent. upon the whole amount of any

fine, forfeiture or other money collected under the provisions of this Chapter. If there be an Attorney appointed by the County Court to represent the interest of any county in judicial proceedings, he shall be also entitled to a fee of five per cent. for assisting in the collection of money so accruing to the county ; and the Sheriff shall retain five per cent. as compensation for his own services in collecting the same, which several amounts shall be deducted from the amount collected, and the balance paid over to the County Treasurer as before directed.

CHAPTER V.

OF REMITTING FINES AND FORFEITURES, COMMUTATION OF PUNISHMENTS AND REPRIVES.

ARTICLE 809. After conviction, the Governor of the State shall have power, without restriction, to remit fines and forfeitures of a pecuniary character ; but he shall report to the Legislature all cases in which he has remitted such penalties, with his reasons for the same.

ART. 810. After conviction, the Governor shall have power to remit forfeitures of lands, or of rights and privileges, or forfeitures of any character, whatever known to the laws of the State, whenever he shall be memorialized by the Legislature in a joint resolution, setting forth the forfeiture which they may wish remitted.

ART. 811. The Governor shall have authority to commute the punishment in every case of capital felony, by changing the penalty of death into that of imprisonment for life, or for a term of years, either with or without hard labor, which may be done by his warrant to the proper Sheriff, commanding him not to execute the penalty of death, and directing him

to convey the prisoner to the Penitentiary, stating therein the time for which and the manner in which the defendant is to be confined, which warrant shall be sufficient authority to the Sheriff to deliver, and to the proper officers of the Penitentiary to receive the convict.

ART. 812. The Governor may also reprieve and delay the execution of the penalty of death to any day fixed by him in a warrant to the Sheriff.

PART IV.

OF PROCEEDINGS IN INFERIOR TRIBUNALS, AND OF CERTAIN SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

TITLE I.

OF PROCEEDINGS IN JUSTICES AND MAYORS COURTS.

CHAPTER I.

General Provisions.

ARTICLE 813. The Mayor, or the officer by law exercising the duties usually incumbent upon the Mayors of incorporated towns and cities, and Recorders thereof, shall exercise within the corporate limits of their respective towns or cities, the same criminal jurisdiction which belongs to Justices of the Peace within their jurisdiction, under the provisions of this Code.

ART. 814. The proceedings before Mayors or Recorders shall be governed by the same rules which are prescribed for Justices of the Peace, and every provision of this Title with respect to a Justice shall be construed to extend to Mayors and Recorders within the limits of their jurisdiction.

ART. 815. The jurisdiction given to Mayors and Recorders of incorporated towns and cities shall not prevent Justices of the Peace from exercising the criminal jurisdiction conferred upon them. But in all cases where there is an in-

corporated town or city within the bounds of a county, the Justices, and the Mayor and Recorder, shall have concurrent jurisdiction within the limits of such town or city.

ART. 816. Warrants issued by a Mayor or Recorder are directed to the Marshal or other proper officer of the town or city where the criminal proceeding is had ; but in case there be no such officer, the process issued by a Mayor or Recorder shall be directed to any peace officer within the city, town or county, and shall be executed by such officer.

ART. 817. Each Justice of the Peace, Mayor and Recorder, shall keep a book in which he shall enter the proceedings had before him in a criminal action, noting the time of issuing his warrant, the name of the defendant, the accusation against him, a minute of the trial, verdict, judgment, and all proceedings had in the cause.

ART. 818. In every county of the State where an Attorney has been appointed by the County Court to represent the interests of the county, such Attorney shall have the right to prosecute, in the name of the State, all persons guilty of offences cognizable before Justices of the Peace.

CHAPTER II.

OF THE ARREST OF THE DEFENDANT.

ARTICLE 819. Whenever a criminal offence which a Justice of the Peace has jurisdiction to try, shall be committed within the view of such Justice, he may issue his warrant for the arrest of the offender.

ART. 820. Whenever any credible person complains to a Justice of the Peace that an offence has been committed which, by law, such Justice has jurisdiction to try, he shall

cause the complaint to be reduced to writing and sworn to, and such complaint shall be attested by the Justice and filed.

ART. 821. The Justice shall, immediately upon receiving the complaint, issue his warrant to any peace officer, commanding him to arrest the defendant and bring him before such Justice. The warrant shall be dated and signed by the Justice ; it shall set forth in intelligible terms the nature of the offence of which the defendant is accused, and name the place of trial.

ART. 822. Any peace officer into whose hands a warrant may come shall execute the same, by arresting the person accused, and bringing him forthwith before the Justice of the Peace.

CHAPTER III.

OF THE TRIAL AND ITS INCIDENTS.

ARTICLE 823. When the defendant is brought before the Justice he shall proceed to try the cause without delay, unless good ground be shown for a postponement thereof, in which case he may postpone the trial to any time not longer than five days, and may, if he deem proper, require the defendant to give bail for his appearance. And if, when required, he fails to give bail, he shall be kept in custody until the final determination of the cause.

ART. 824. If the warrant has been issued upon a complaint made to the Justice, the complaint and warrant shall be read to the defendant. If issued by the Justice without previous complaint, he shall state to the defendant the accusation against him.

ART. 825. A defendant shall not be discharged by reason of any informality in the complaint or warrant ; and the proceeding before the Justice shall be conducted without reference to technical rules.

ART. 826. The Justice shall issue his order to the Constable or other peace officer, directing him to summon a Jury of twelve men for the trial of the cause before him.

ART. 827. The defendant and the complainant, or any counsel prosecuting for the State, shall be entitled to four peremptory challenges each.

ART. 828. Either party may challenge any number of Jurors for the following causes :

1. That the Juror is not a freeholder in the State or householder in the county.
2. That the Juror is not a qualified elector of the county.
3. Relationship by consanguinity or affinity, between the Juror and the defendant or complainant.
4. That the Juror has been convicted of some offence which, by law, disqualifies him from sitting on a Jury.

ART. 829. After impanelling the Jury, the defendant shall be required to plead, and he may plead " guilty " or " not guilty," or the special plea named in the succeeding Article.

ART. 830. The only special plea allowed is that of former acquittal or conviction for the same offence.

ART. 831. All pleading in the Justice's Court, in criminal actions, is oral ; but the Justice shall note upon his minutes the nature of the plea offered.

ART. 832. If the defendant plead " guilty," proof shall be offered to the Jury, as to the offence ; and they shall assess the amount of fine.

ART. 833. If the defendant refuse to plead, the Justice shall enter the plea of " not guilty," and the cause proceed accordingly.

ART. 834. The following oath shall be administered by the Justice of the Peace to the Jury :

" You swear that you will well and truly try the issue before you, between the State and the defendant, according to law and evidence, so help you God."

ART. 835. If the State be represented by counsel he may examine the witnesses and argue the cause to the Jury ; if the State is not represented the witnesses shall be examined by the Justice.

ART. 836. The defendant has a right to appear by counsel as in all other cases, but not more than one Attorney shall conduct either the prosecution or defence ; and the counsel for the State may open and conclude the argument to the Jury.

ART. 837. The rules of evidence which govern the trials of criminal actions in the District Court shall apply also to such actions in Justice's Courts.

ART. 838. When the cause is submitted to the Jury they shall retire in charge of some officer, and be kept together until they agree to a verdict or are discharged.

ART. 839. If a Jury fail to agree upon a verdict, after being kept together a reasonable time, they shall be discharged ; and, if there be time left on the same day, another Jury shall be impanelled to try the cause ; or the Justice may adjourn for not more than two days, and again impanel a Jury for the trial of such cause.

ART. 840. In case of an adjournment the Justice shall require the defendant to enter into bail for his appearance ; and upon his failure to give bail the defendant may be held in custody.

ART. 841. Bail bonds taken in accordance with any of the preceding Articles of this Chapter may be sued on in the name of the State before the District Court, and recovery had as provided in Article 87.

ART. 842. When the Jury have agreed upon a verdict,

they shall bring the same into Court, and the Justice shall see that it is in proper form.

ART. 843. The Justice shall enter the verdict upon his minute book, and render the proper judgment thereon.

ART. 844. Wherever, by the provisions of this Title, the peace officer is authorized to retain a defendant in custody, he may place him in jail or any other place where he can be safely kept.

CHAPTER IV.

OF THE JUDGMENT AND EXECUTION.

ARTICLE 845. The judgment, in case of conviction in a criminal action before a Justice of the Peace, shall be that the State of Texas recover of the defendant the fine assessed by the Jury and costs, and that the defendant remain in custody of the Sheriff until the fine and costs are paid, and further, that execution issue to collect the same.

*Approved
Th. 246*
ART. 846. A defendant, before a Justice, may be discharged by the payment of the fine and costs, or by entering into bond payable to the State of Texas, with good security for the amount of such fine and costs, within thirty days from the time of judgment.

*Approved
Th. 246*
ART. 847. The bond taken under the provisions of the preceding Article shall be filed with the Justice, and at the end of thirty days from the rendition of judgment shall operate as a judgment, and execution be issued upon the same, unless the money therein due be paid into the hands of the Justice in satisfaction thereof.

*Approved
Th. 246*
ART. 848. If a defendant be placed in jail on account of

failing to pay the fine and costs, he can be discharged on habeas corpus by showing :

1. That he is too poor to pay the fine and cost, and, further,
2. That he has remained in jail a sufficient length of time to satisfy the fine, at the rate of three dollars for each day. And a Justice of the Peace may discharge the defendant upon his showing the same cause, by written application presented to such Justice, and upon any such application being granted the Justice shall note the same on his minute book.

ART. 849. In every case of conviction before a Justice there shall be issued an execution for the collection of the fine and costs, which shall be enforced and returned in the manner prescribed by law in civil actions before Justices.

ART. 850. Every peace officer is bound to execute all process directed to him from a Justice of the Peace.

TITLE II.

OF CORONERS' INQUESTS.

ARTICLE 851. It is the duty of the Coroner to hold inquests in the following cases :

1. When any person dies in prison.
2. When any person is killed, or from any cause dies an unnatural death, except under sentence of the law.
3. When the body of any human being is found, and the circumstances of his death are unknown.
4. When the circumstances of the death of any person are such as to lead to suspicion that he has come to his death by violent means.

ART. 852. When a body upon which inquest ought to have been held has been interred, the Coroner may cause it to be disinterred for the purpose of holding such inquest.

ART. 853. The Coroner shall act in such cases upon verbal or written information given him by any credible person, or upon facts within his own knowledge.

ART. 854. It is the duty of the Sheriff, and of every keeper of any prison, to inform the Coroner of the death of any person confined therein.

ART. 855. The Coroner may summon a Jury of inquest himself, or may direct an order to any peace officer for that purpose.

ART. 856. A Jury of inquest shall consist of six men, citizens of the proper county, freeholders or householders and qualified electors.

ART. 857. A person summoned as a Juror in such cases who refuses to obey the summons, may be fined by the Coroner, not exceeding ten dollars.

ART. 858. The Coroner shall, so soon as a Jury is summoned, proceed with them to the place where the dead body may be, for the purpose of inquiring into the cause of the death.

ART. 859. The following oath shall be by the Coroner administered to the Jury: "You swear that you will diligently enquire into the cause, manner, time and circumstances of the death of the person whose body lies before you, and that you will thereupon make presentment of the truth, the whole truth, and nothing but the truth, so help you God."

ART. 860. The Coroner shall have power to issue subpoenas to enforce the attendance of witnesses upon an inquest; and, in case of disobedience or failure to attend, may issue attachments for such witnesses.

ART. 861. The testimony of each witness shall be reduced to writing, under the direction of the Coroner, and subscribed by the witness.

ART. 862. A Coroner's inquest may be held in private if deemed proper. If other persons than the Coroner and the Jury be present, they shall not interfere with the proceedings; and no question shall be asked a witness, except by the Coroner or one of the Jurors, unless, as in cases provided for in Article 865, some person is present, who has been accused of killing the deceased. In all such cases the accused may interrogate the witness.

ART. 863. After having examined into the cause, time, manner and place of the death of the deceased, the Jury shall form their verdict, setting forth distinctly the facts relating thereto, which they find to be true; which verdict shall not be valid unless signed by the Coroner and each of the Jurors.

ART. 864. The Coroner shall keep a book, in which he shall make a minute of all the proceedings relating to every inquest held by him. Such minute shall set forth,

1. The nature of the information given the Coroner, and by whom given, unless he acts upon facts within his own knowledge.
2. The time and place when and where the inquest is held.
3. The name of the deceased, if known, or, if not known, as accurate a description of him as can be given.
4. The verdict of the Jury of inquest.
5. If any arrest is made of a suspected person before inquest held, the name of the person and the fact of his arrest, as well as everything material which relates thereto, shall be noted.

ART. 865. When the Coroner has knowledge that the killing was the act of any person, or when an affidavit is made that there is reason to believe that such person has killed the deceased, a warrant may be issued for the arrest of the person accused, before inquest held, and the accused shall have the right to be present when the same is held.

ART. 866. Any peace officer to whose hands the Coroner's warrant of arrest shall come, is bound to execute the same without delay; and he shall detain the person arrested until

his discharge is ordered by the Coroner, or some Judge upon habeas corpus.

ART. 867. A warrant of arrest in such cases shall be sufficient if it issues in the name of "The State of Texas," recites the name of the accused, or describes him when his name is unknown, sets forth the offence charged in plain language, and is signed officially by the Coroner.

ART. 868. If it be found by the verdict of the Jury of inquest that a person already arrested did in fact kill the deceased, or was an accomplice or accessory to the death, the Coroner may, according to the facts of the case, commit him to jail, or require him to execute a bail bond with security for his appearance before the proper court to answer for the offence.

ART. 869. A bail bond taken before a Coroner shall be sufficient if it recite the offence of which the party is accused, be payable to the State of Texas, be dated and signed by the principal and his surety.

ART. 870. The Coroner shall file with the Clerk of the District Court of the proper county the warrant of arrest, the testimony taken, the bond and other papers relating to the inquest. If the District Court be in session, the papers shall be forthwith filed; if not in session, they shall be filed on or before the first day of the next term of the court.

ART. 871. A bail bond taken in accordance with the directions of this Title, may be forfeited and judgment recovered thereon as in cases of other bail bonds.

ART. 872. When, by the verdict of a Jury of inquest, it is found that any person not in custody killed the deceased, or was an accomplice to the death, the Coroner shall issue his warrant to the Sheriff or other peace officer, commanding him to arrest the person accused and take him before some Magistrate to be named in the writ.

ART. 873. The warrant issued in accordance with the provisions of the preceding Article shall be sufficient if it run in the name of "The State of Texas," give the name of

the person accused, or describe him when his name is unknown, recite the offence with which he is charged in plain language, and be dated and signed officially by the Coroner.

ART. 874. The peace officer into whose hands such warrant may come, shall forthwith execute the same by arresting the defendant and taking him before the Magistrate named in the warrant, and the Magistrate shall proceed to examine the accusation, and the same proceedings shall be had thereon as in other cases where persons accused of offences are brought before him.

ART. 875. When there is no Coroner in a county, or he is absent or unable to serve, or resides more than ten miles from the place where any dead body is found, the duties prescribed in this Title to be performed by him may be performed by any Justice of the Peace of the county, who shall proceed in holding the inquest according to the rules prescribed for the government of the Coroner.

ART. 876. When a Jury of inquest have agreed to a verdict, it is the duty of the Coroner or Justice holding the inquest to certify that the same is the verdict of the Jury.

ART. 877. Nothing contained in this Title shall prevent proceedings from being had for the arrest and examination of an accused person before a Magistrate, pending the holding of an inquest. But when a person accused of an offence has been already arrested under a warrant from the Coroner, he shall not be taken from the hands of the peace officer by a warrant from any other Magistrate.

TITLE III.

OF FUGITIVES FROM JUSTICE.

ARTICLE 878. A person charged in any State or Territory of the United States with treason, felony or other crime, who shall flee from justice and be found in this State, shall, on demand of the Executive authority of the State or Territory from which he fled, be delivered up to be removed to the State or Territory having jurisdiction of the crime.

ART. 879. It is declared to be the duty of all judicial and peace officers of the State, to give aid in the arrest and detention of a fugitive from any other State or Territory, that he may be held subject to a requisition by the Governor of the State or Territofy from which he may have escaped.

ART. 880. No person shall be arrested, or if arrested shall be delivered up on the requisition of the Governor of any other State or Territory, where it appears that the offence with which he is charged was committed prior to the sixteenth day of February, A. D. 1846.

ART. 881. Whenever the Governor of this State may think proper to demand a person who has committed an offence in this State, and has fled to another State or Territory, he may commission any suitable person to take such requisition; and the accused person, if brought back to the State, shall be delivered up to the Sheriff of the county in which it is alleged he has committed the offence. A reasonable compensation for his services shall be paid to the person so commissioned out of the Treasury of the State.

ART. 882. Whenever complaint on oath is made to a Magistrate that any person within his jurisdiction is a fugitive from justice from another State or Territory, it is his duty to issue a warrant of arrest for the apprehension of the person accused.

ART. 883. The complaint shall be sufficient if it recite :

1. The name of the person accused.
2. The State or Territory from which he has fled.
3. The offence committed by the accused.
4. That he has fled to this State from the State or Territory where the offence was committed.
5. That the act alleged to have been committed by the accused is a violation of the Penal law of the State or Territory from which he fled.

ART. 884. The warrant of a Magistrate to arrest a fugitive from justice shall direct the peace officer to apprehend the person accused and bring him before such Magistrate.

ART. 885. When the person accused is brought before the Magistrate, he shall hear proof, and if satisfied that the defendant is charged in another State or Territory with the offence named in the complaint, he shall require of him bail to appear before such Magistrate at a specified time ; and in default of such bail, he may commit the defendant to jail to await a requisition from the Governor of the State or Territory from which he fled.

ART. 886. A properly certified transcript of an indictment against the accused shall be evidence to show that he is charged with the crime alleged.

ART. 887. A person arrested under the provisions of this Title shall not be committed or held to bail for a longer time than six months.

ART. 888. The Magistrate by whose warrant an accused person is arrested shall forthwith give notice to the District Attorney of the District in which the arrest is made, who shall forthwith, through the mail, give notice to the Governor of the State or Territory from which the defendant is charged to have fled.

ART. 889. If the defendant is not arrested under a warrant from the Governor of this State before the expiration of the time for which he is committed, or held to bail, he shall be discharged.

ART. 890. A person who shall have been once arrested under the provisions of this Title, and discharged under the provisions of the preceding Article, or by habeas corpus, shall not be again arrested upon a charge of the same offence, except by warrant from the Governor of this State.

TITLE IV.

OF VAGRANTS.

ARTICLE 891. A vagrant is an idle person, living without any visible means of support, and making no exertion to obtain a support by any honest employment.

ART. 892. It is the duty of each Chief Justice of a county and Justice of the Peace, to order the arrest of vagrants ; which may be done by warrant, directed to any peace officer.

ART. 893. A warrant to arrest a vagrant may be issued upon complaint made on oath by any three credible persons, householders of the county where the complaint is made.

ART. 894. A peace officer shall arrest a vagrant when directed by warrant, and take him before one of the Magistrates named in Article 892.

ART. 895. When a person arrested is taken before the Magistrate he shall proceed to ascertain whether he is a vagrant within the meaning of the law, and if it be found that he is, the Magistrate shall make an order that such vagrant be put to labor in such manner as the County Court may direct.

ART. 896. The Magistrate trying a case of vagrancy shall certify to the County Court his order in every case where he has adjudged a person to be a vagrant.

ART. 897. The County Court of each county shall, by general regulation, provide for the manner in which vagrants are to be employed, and the kind of labor to which they shall be put, which may be upon any road, bridge or other public work of the county.

ART. 898. The County Court shall so regulate the disposal of vagrants as that they may be compelled to labor for the first offence not more than one week, and for the second, or any subsequent offence, not more than three weeks, during which time the person so compelled to work shall be supported, and, if deserving thereof, shall be paid an additional compensation, at the discretion of the County Court, out of the county treasury.

ART. 899. The municipal authorities of incorporated towns and cities may make like regulations respecting cases of vagrancy within their respective jurisdictions, and vagrants may be arrested and dealt with under the warrant of the Mayor, or Recorder, of such town or city ; may be compelled in like manner to labor upon any street or public work of such town or city, and shall be supported and compensated therefor out of the treasury of the corporation, at the discretion of such municipal authorities.

ART. 900. A person arrested as a vagrant may demand a trial by Jury, and the Magistrate shall thereupon cause a Jury of twelve householders or freeholders to be summoned and sworn for the trial of such person, and render such judgment as the verdict authorizes.

TITLE V.

OF DISORDERLY PERSONS.

ARTICLE 901. The municipal authorities of each city or town may make such regulations as may be deemed expedient for the arrest and punishment of disorderly persons ; and the County Court of each county may provide for the employment in labor, upon public works, of all persons arrested and adjudged by a Magistrate to be disorderly persons.

ART. 902. The following are disorderly persons within the meaning of this Title :

1. Strolling persons who go about proposing to tell fortunes, or exhibiting in public any cheating tricks or apparatus.
2. Keepers of baudy houses, or houses for the common resort of prostitutes, vagabonds or free negroes.

ART. 903. Disorderly persons may be arrested and dealt with as vagrants are directed to be treated by the provisions of Title IV, Part IV, of this Code ; and like proceedings as in cases of vagrants may be had before Magistrates, in ascertaining whether a person arrested is a disorderly person.

ART. 904. A person adjudged by the Magistrate to be a disorderly person may also be fined, not exceeding twenty-five dollars and imprisoned in Jail, not exceeding ten days.

ART. 905. Disorderly persons may demand a trial by Jury in the same manner as vagrants.

TITLE VI.

OF PROCEEDINGS AGAINST FREE PERSONS OF COLOR REMAINING IN THE STATE IN VIOLATION OF LAW.

ARTICLE 906. A person of color is one who has at least one-fourth African blood

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ART. 908. No free person of color can lawfully immigrate to, or remain in this State, except where special permission is given by the Constitution and Laws of the State.

ART. 909. Where a free person of color, who is not specially permitted by law to reside in the State, is found within its limits, any Magistrate may, from his own knowledge, or upon information given him by a credible person, issue his warrant for the arrest of such free person of color.

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ART. 910. And thereupon the Magistrate shall give a written order to the Sheriff of the county to take such free person of color, and hire him for the term of six months to the highest bidder, at the court-house of the county, giving notice of the hiring by advertisement posted up at two or more public places in the county.

ART. 911. The proceeds of the hire of a free person of color shall be collected by the Sheriff, and after deducting costs of the proceedings and expenses, the remainder shall be paid over to such person to enable him to leave the State, and the Sheriff shall notify him to leave within thirty days from the time he receives the money.

ART. 912. If a free person of color does not leave the State within thirty days from the time the proceeds of his hire is paid to him as directed in the preceding Article, he may be arrested by the Sheriff of the county, upon the warrant of a Magistrate, and may be hired at public outcry to the highest bidder, for cash, for the term of five years, unless

he can show, when brought before the Magistrate, that he was prevented from leaving the State by sickness, or other unavoidable casualty, in which case an additional time of thirty days shall be given him to leave the State; and if he be found in the State after the expiration of that time he shall be proceeded against as above directed in this Article.

ART. 913. One-half of the proceeds of the hiring provided for in the preceding Article shall be paid into the County Treasury, and the balance to the free person of color, after deducting five per cent. of the whole amount as compensation for the services of the Sheriff.

ART. 914. At the expiration of the term of five years, for which any free person of color is hired as herein directed, the portion of the proceeds of the hire to which he is entitled shall be paid to him, and he shall be again warned by the Sheriff to leave the State.

ART. 915. If after the expiration of thirty days from the time when the money is paid to a free person of color he be found in the State, a warrant of arrest may be again issued, and he may be brought before a Magistrate, and unless he can make it appear satisfactorily that he was prevented from leaving by force, or by reason of sickness, or some unavoidable casualty, the Magistrate shall issue an order to the Sheriff for the sale of such free person of color, by virtue of which the Sheriff shall, after advertising for ten days, by public notice in some newspaper in the county, if there be one published in the county, or by notices posted up at two or more public places, if there is no newspaper published in the county, sell such free person of color as a slave for life, to the highest bidder, for cash.

ART. 916. The ownership of said person of color shall by such sale be fully vested in the purchaser. The proceeds of the sale shall be paid into the County Treasury, after deducting five per cent. as compensation for the services of the Sheriff.

ART. 917. A free person of color, while hired under the provisions of any of the foregoing Articles, shall in all respects for the term of the hiring be considered and treated as a slave.

TITLE VII.

OF PROCEEDINGS BEFORE JUSTICES OF THE PEACE AND MAYORS, AGAINST SLAVES WHO HIRE THEIR TIME, OR ARE HIRED TO OTHER SLAVES, OR TO FREE PERSONS OF COLOR.

ARTICLE 918. It shall not be lawful for the master of any slave to permit such slave to hire his time, or to hire him to any other slave, or to any free person of color.

ART. 919. The term master, as used in this Title, includes all persons having the charge, control, or management, of slaves for any period of time.

ART. 920. By the term "hire his time," as used in this Title, is meant any contract between the master and slave, by which such slave agrees to pay any stipulated price for his time, and during such time regulates his own conduct in respect to labor to be performed by him, or makes contracts as to such labor.

ART. 921. The provisions of this Title shall not prevent the master of a slave from permitting such slave to go at large for one day at a time in search of employment.

ART. 922. It is the duty of every peace officer, and any other person has the right, to arrest a slave who may be found hiring his time, or hired to any free person of color or slave contrary to the provisions of this Title.

ART. 923. Any Justice of the Peace, Mayor, or Recorder, of a town or city, may, by order either verbal or written, directed to a peace officer, cause the arrest of a slave who hires his time, or is hired to another slave, or to a free person of color.

ART. 924. When a slave is arrested by a peace officer, or

other person, under the provisions of the two preceding Articles, he shall be taken before a Justice of the Peace, Mayor, or Recorder. The jurisdiction of a Justice of the Peace, in such cases, shall extend to his county, and that of Mayors and Recorders to the limits of their respective corporations.

ART. 925. The Justice, Mayor, or Recorder, shall proceed in a summary manner to examine into the facts, and if it be found that such slave has been permitted to hire his time, or has been hired to a slave or free person of color, he shall commit such slave to the county Jail, to remain until discharged as hereinafter provided.

ART. 926. The Justice, Mayor, or Recorder, shall assess a fine of not less than ten, nor more than one hundred dollars, against the slave, who shall have been found hiring his time, or hired to another slave, or free person of color, and shall cause notice to be given to the master of such slave, if he reside within the county where the arrest takes place, or if he resides without the county, or be temporarily absent therefrom, then to his agent, if he has one in the county.

ART. 927. If the master of the slave, or any person for him, shall pay to the Sheriff of the county the amount of fine assessed by the Justice or Mayor against the slave, such slave shall be discharged from custody.

ART. 928. If a slave, arrested and committed under the provisions of this Title, remains in Jail for a time exceeding five days, it shall be the duty of the Sheriff to hire such slave for a term of thirty days at public out-cry, giving one day's notice thereof, by posting an advertisement at the court-house door of the proper county ; such hiring shall be for cash, payable before the slave is delivered into the hands of the hirer.

ART. 929. The hirer of a slave under the provisions of the preceding Article, and under Article 931, shall be entitled to his services, and shall, during the time for which he is hired, exercise all the rights of ownership over such slave ; and at the expiration of the thirty days shall deliver the slave into the hands of the Sheriff.

ART. 930. If the master, before or immediately upon the expiration of the time for which the slave was hired, make

application to the Sheriff, the slave shall be delivered to him so soon as the time shall have expired for which the hiring took place, upon his paying the fine assessed and all costs accruing by reason of the proceeding.

ART. 931. If no application by the master be made, or he refuse to pay the fine and cost, the Sheriff shall proceed, after giving five days notice by advertisement, posted at three public places, one of which shall be the court-house door, to hire such slave for a term of twelve months to the highest bidder, for cash, payable before the slave is delivered into the hands of the hirer ; at the expiration of the time of hiring such slave shall be delivered into the hands of the Sheriff.

ART. 932. If, before or at the expiration of the time for which a slave was hired, under the preceding Article, the master make application to the Sheriff, such slave shall be delivered to him so soon as the time has expired for which the hiring took place, upon his paying to the Sheriff the fine assessed and the costs that have accrued by reason of the proceeding.

ART. 933. If no application be made, as provided for in the preceding Article, the Sheriff shall give public notice for thirty days, by posting advertisements at three of the most public places in the county, one of which shall be the court-house door, and no two of which shall be in the same town or city, (except the city of Galveston.) This notice shall state the facts as to the previous apprehension of the slave, and the proceedings which have taken place ; shall contain a full description of such slave, and further state that unless claimed by some person duly authorised to receive the slave, he will be sold to the highest bidder, for cash, at the court-house door, on a day to be fixed by the notice. If there be a newspaper published in the county, this notice shall also be inserted therein, and if there be no newspaper in the county, then the same shall be published in a newspaper nearest to the county seat of the county where the proceedings have taken place.

ART. 934. The Sheriff shall deliver the slave, if demanded by his master, at any time before the sale has taken place, upon payment of the fine assessed and the costs that have accrued.

ART. 935. If no demand be made, as before provided, or

the person demanding refuse to pay the fine and costs, the slave shall be sold on the day appointed to the highest bidder, for cash, and the title of the purchaser shall be good and valid against all persons whatever.

ART. 936. All fines assessed, and all money received for the hire or sale of a slave, under the provisions of this Title, shall be paid into the County Treasury of the proper county, after deducting twenty per cent therefrom as compensation to the Sheriff for his services.

ART. 937. The Sheriff shall also be entitled to be paid, as costs, fifty cents a day for the time he may have the custody of any slave arrested under the provisions of this Title. He shall safely keep any such slave, and for that purpose may place him in Jail during any time when the slave is in his possession, by delivery from the hirer under Articles 929 and 931.

ART. 938. When any person shall apply for a slave as his master, under the provisions of this Title, the Sheriff may, if he has doubt as to the right of the person applying, require him to file suit in the District Court to establish his claim ; and the claimant shall be entitled to damages in such suit, if it appear that the Sheriff was clearly wrong in refusing to deliver the property upon his demand.

ART. 939. If any person shall appear before the County Court within five years from the time of the sale of a slave under the provisions of this Title, and establish to the satisfaction of the Court his right as the owner of the slave sold, the County Court shall pay to such owner, out of any money in the treasury, the amount which was received by the county from the proceeds of a sale of the slave ; and if the County Court refuse to pay the same the owner may bring his suit against the county, in the District Court, to establish his right.

ART. 940. The term "owner," as here used, means the person having the rightful property in a slave, either in his own right, or as executor, administrator or guardian.

ART. 941. The application or demand, for the possession of a slave, spoken of in Articles 930, 932, 934, and 938, may be made by any duly authorised agent of the person who is

master or owner of the slave, and shall have the same effect as if made by such owner or master in person.

ART. 942. Upon any investigation before a Justice, or Mayor, under the provisions of this Title, if it be proved that a slave is in the habit of making contracts for himself, with regard to his labor, without the subsequent ratification by the master, or that he lives off the premises of his master, and conducts any business or labor not under the immediate superintendence of the master, it shall be deemed sufficient proof that he hires his time.

ART. 943. If it appear to the Justice, or Mayor, that a negro arrested as a slave is in fact a free person of color, who resides within this State in violation of law, such proceedings shall be had as are directed in Title VI, of Part IV. If it appear upon such examination that a slave arrested is a runaway, he shall be dealt with as directed by law in the case of runaway slaves.

TYLERVILLE

OF REPORTS RELATIVE TO CRIME.

ARTICLE 944. Each Clerk of the District Court shall, within twenty days after the adjournment of a term of the Court, make out and transmit to the Attorney General a report setting forth :

1. The number of indictments and informations presented to the last term of the Court and for what offences.
2. The number of arraignments, convictions and acquittals for each offence, and the penalties assessed in each case.
3. The number of indictments and informations which have been disposed of without the intervention of a petit Jury, with the cause and manner of such disposition.
4. The amount of money collected and reported by the Sheriff under any criminal process.

ART. 945. The Attorney General shall furnish to each Clerk of the District Court forms for reports in the cases provided for in the preceding Article.

ART. 946. Each Justice of the Peace shall report in like manner, to each term of the District Court, the number of causes which have been tried and determined before him, with the disposition made of the same in all cases where he has jurisdiction to try offences ; and the Clerk of the District Court shall send a copy of such report to the Attorney General, accompanying his own report, as required by Article 944.

ART. 947. The Attorney General shall, on the first Monday in December of each year, communicate to the Governor of the State all the information which he has received from the District Clerks under the provisions of Articles 944 and 946, with such suggestions thereon as he may deem useful respecting the penal laws of the State and the enforcement of the same.

ART. 948. The information thus communicated to the Governor shall be by him laid before the Legislature at its regular or any called session.

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PART V.

OF COSTS IN CRIMINAL ACTIONS.

TITLE I.

TAXATION OF COSTS.

*amend.
No. 284*

ARTICLE 949. The Clerk of the Supreme Court, each Clerk of a District Court, and each Justice of the Peace and Mayor of an incorporated city or town, shall keep a book called a fee book, in which they shall tax the costs accruing in each criminal action or proceeding before them.

ART. 950. When, as hereafter provided, costs are to be paid by the State, the fees allowed in Title II, of this Part, shall be charged in criminal proceedings; and if any one of the officers named in the preceding Article shall charge, either for himself or any other persons entitled to costs, higher rates than are allowed by law, he is guilty of a penal offence, and subject, on conviction, to be removed from office.

ART. 951. When, as hereafter provided, costs are to be paid by the defendant, the fees allowed in Title III, of this Part, shall be taxed; and no officer entitled to fees shall charge higher rates than those allowed under the penalty prescribed in the preceding Article.

TITLE II.

OF COSTS PAID BY THE STATE.

~~amend.~~ ARTICLE 952. Costs in accordance with the rates herein fixed, shall be paid by the State to the following persons and ~~III. 206~~ in the following cases:

~~repealed~~ To the clerks of the District Courts shall be paid,

~~III. 206~~ For each transcript on appeal, ten cents a hundred words.

To the Sheriff shall be paid in each case of felony, where the defendant is brought to trial, whether he be convicted or acquitted :

For executing each warrant of arrest or capias, or for making arrest without warrant, one dollar.

For summoning or attaching each witness, fifty cents.

For summoning Jury, two dollars.

For conveying prisoners to the Penitentiary, for each mile going and coming, ten cents ; for each guard employed by him in conveying such prisoners, the same amount ; and for the support of each prisoner ten cents for each mile traveled in going to the Penitentiary. For conveying a prisoner taken under criminal process, ten cents for each mile traveled in going to and returning from the place to which he is required to convey such prisoner, and the like sum for one person employed as a guard in such cases ; and for the support of the prisoner ten cents for each mile traveled in going to the place to which he is required to convey such prisoner : the distance to be computed over the most commonly traveled route.

For executing death warrant, twenty-five dollars.

For each mile he may be compelled to travel in executing criminal process, or in summoning or attaching witnesses, six cents.

ART. 953. When services have been rendered by any peace officer other than a Sheriff, in cases where the State is liable for costs, such peace officer shall receive the same fees as are allowed the Sheriff.

ART. 954. The fees accruing to peace officers other than the Sheriff, shall be taxed as Sheriff's costs, the clerk noting the name of the peace officer. Such costs shall be collected by the Sheriff as a part of his own, and he shall be liable to pay the same to the proper person so soon as he has received it from the State; and if he refuse to pay the same when demanded he shall be liable in a civil action before a Justice of the Peace to pay five times the amount of such fees.

ART. 955. The fees allowed Sheriffs and Clerks shall be audited and paid by the officers of the State Treasury, upon the certificate of the Judge of the District Court attached to the bill of costs.

ART. 956. The costs and fees provided for being paid by the State under this Title shall be a charge against the defendants in cases where they are convicted, in the cases in which they may accrue, to be collected of defendants as other costs are under this Code, and when collected of defendants shall, in all cases, be paid by the officer collecting the same into the Treasury of the State.

TITLE III.

OF COSTS TO BE PAID BY COUNTIES, AND THE MANNER OF ENFORCING COLLECTION.

ARTICLE 957. Each county shall be liable for all the expenses incurred on account of the safe keeping of prisoners confined in their respective jails or kept under guard.

ART. 958. Each county shall be liable for the expenses of food and lodging for Jurors impanelled in a case of felony; but in such cases no scrip shall be issued or money paid to the Jurors whose expenses are so paid.

ART. 959. A Juror may pay his own expenses and draw his scrip, but the county is responsible in the first place for all the expenses incurred by the Sheriff in providing suitable food and lodging for the Jury, not to exceed, however, one dollar and twenty-five cents a day.

ART. 960. The Sheriff shall receive from the county one dollar a day for each guard he employs, and also the reasonable expenses of such guard, not exceeding one dollar a day, and for the support and maintainance of each prisoner in his custody, fifty cents a day during the time he has charge of such prisoner.

ART. 961. It is the duty of the Sheriff to pay the expenses of Jurors impanelled in cases of felony. (except when they are paid by the Juror himself,) the expense of employing and maintaining a guard, and to support and take care of all prisoners ; for all of which he shall be reimbursed by the county according to the rates fixed in the two preceding Articles.

ART. 962. At each term of the District Court of his county the Sheriff may present to the District Judge presiding his accounts for the keeping of persons and maintaining guards since the last term of the Court, and also for all expenses incurred by him for food and lodging of Jurors in cases of trials for felony during the term at which his account is presented, which account shall be verified by the oath of the Sheriff.

ART. 963. If the account does not exceed the amount allowed by Articles 959 and 960, and the same appears to the Judge to be correct, he shall allow it ; and such account shall be filed with the District Clerk.

ART. 964. The District Judge shall give to the Sheriff a draft upon the County Treasurer for the amount of each account allowed by him ; and the same when presented to the County Treasurer shall be paid out of any money in his hands.

ART. 965. The Coroner shall be entitled to receive for summoning a Jury and all other business connected with an inquest upon a dead body, including certifying and returning the same to the proper Court, five dollars, to be paid out of

the County Treasury; and when a Justice of the Peace acts as Coroner he shall be paid a like fee for the same services.

ART. 966. Services performed under the last Article shall be proved by the affidavit of the Coroner or Justice, and presented to the District Judge, who shall, if the account be allowed, give his draft upon the County Treasurer, and the same shall stand upon the same footing and be paid as provided for drafts to the Sheriff.

ART. 967. The fund raised in accordance with Articles 806 and 807, shall not be appropriated by the County Court for any purpose other than the payment of costs due officers in criminal proceedings, and for which the counties are liable, and it is the duty of the County Treasurer to reserve said fund for that purpose, and pay out of it any draft drawn upon him by a District Judge.

ART. 968. Drafts drawn by a District Judge on the County Treasurer, shall, without any action of the County Court, or acceptance by the County Treasurer, be receivable for all county taxes at par. They may be transferred by delivery, and no ordinance, rule or regulation whatever, made by the County Court, shall postpone or defeat the right of a holder of such draft to pay county taxes therewith.

original
III. 245

TITLE IV.

OF COSTS PAID BY THE DEFENDANT.

CHAPTER I.

IN THE SUPREME AND DISTRICT COURTS.

ARTICLE 969. In every case of misdemeanor, where the defendant is convicted, the costs shall be paid by him; and the same shall be taxed by the Clerk, and collected under execution or other process as provided in Articles 698, 699, 700 and 701.

amount. **ART. 970.** Costs when adjudged against the defendant shall be allowed according to the following rates:

VII. 245 To the Attorney General shall be paid,

For every conviction for offences against the Penal Laws relating to gaming, when an appeal is taken and the judgment affirmed, twenty dollars.

For every like conviction and affirmance of judgment in other cases of misdemeanor, ten dollars.

ART. 971. To the District Attorney shall be paid,

In every case of conviction for violation of the laws against gaming, where no appeal is taken or where the judgment on appeal is affirmed, fifteen dollars.

For every like conviction and affirmance of judgment in other misdemeanors, ten dollars.

To the Clerk of the Supreme Court shall be paid,

In every appeal by the State in a case of misdemeanor, where the judgment is reversed, and in every appeal by the defendant where the judgment is affirmed, ten dollars.

ART. 972. To the District Clerk shall be paid,

For issuing each writs, subpoena, attachment, or other process, fifty cents.

Entering appearance, ten cents.
 Docketing cause to be charged once, fifteen cents.
 Swearing and impannelling Jury, thirty cents.
 Swearing each witness, ten cents.
 Entering each order, thirty cents.
 Receiving and recording verdict, thiry cents.
 Entering judgment, fifty cents.
 Each transcript on appeal, ten cents a hundred words.
 Copy of indictment or information, when asked by defendant, fifty cents.

ART. 973. To the Sheriff shall be paid,
 For executing warrant of arrest or capias, one dollar.
 Summoning or attaching witness, fifty cents.
 For each Jury, one dollar.
 For executing search warrant, two dollars.
 For each execution, two dollars.
 For each commitment or release, one dollar.
 For each bond, one dollar.
 For attending prisoner on habeas corpus, three dollars a day.

For each mile necessarily traveled in executing any criminal process, including subpœnas and attachments for witnesses, six cents.

CHAPTER II.

IN JUSTICES COURTS.

ARTICLE 974. In every case of misdemeanor tried before a Justice of the Peace, Mayor or Recorder, the defendant upon conviction shall pay costs according to the rates herein fixed, and in every proceeding under this Code, where a Justice of the Peace, Mayor or Recorder, acts for the purpose of preventing or suppressing crime, costs shall be paid as herein provided.

ART. 975. Justices of the Peace, Mayors and Recorders shall be allowed costs as follows :

Issuing warrant of arrest, warrant of commitment, search warrant or other process against a defendant, one dollar.

Issuing subpoena or attachment, fifty cents.

Taking bail, one dollar.

Sweating witness, twenty-five cents.

Administering oath, where complaint is made to him relative to crime, fifty cents.

Swearing and impanelling Jury, one dollar.

Receiving and entering verdict and judgment, one dollar.

For each execution, one dollar.

For making copies of any papers or entries on his dockets, including certificate for any person applying for same, fifteen cents for each hundred words.

ART. 976. The Constable or other peace officer shall receive in all cases before a Justice of the Peace for misdemeanors, the following fees :

For executing warrant of arrest, or of commitment, one dollar.

Summoning Jury, two dollars.

Serving subpoena or attachment, fifty cents.

For each commitment, one dollar.

For each execution, one dollar.

For conveying prisoner to jail, including guard and all other expenses, twenty-five cents a mile.

For every mile he may necessarily travel in executing criminal process, including subpoenas and attachments for witnesses, six cents a mile.

In every case of violation of the law against gaming tried before a Justice of the Peace, Mayor or Recorder, five dollars in addition to the above fees.

ART. 977. To the Sheriff, in addition to the fees allowed in the preceding Article, shall be allowed,

For executing search warrant, two dollars.

For taking bail, one dollar.

ART. 978. The rules as to the rate of cost allowed to Justices of the Peace, Mayors and Recorders, and to peace officers, are to apply to proceedings before Justices, Mayors

and Recorders, in cases of vagrancy and of other special proceedings of a criminal nature ; and where the defendant is not able to pay in cases of vagrancy, or of disorderly persons, the same shall be a tax upon the county, and shall be allowed and paid by the County Court.

*apply.
M. 245*

TITLE V.

OF COSTS TO BE PAID BY A WITNESS.

ARTICLE 979. In all criminal cases where a witness has been subpœnaed and fails to attend, he shall be liable for the costs of an attachment, unless good cause be shown to the Court or Magistrate why he failed to obey the subpœna.

FINAL TITLE.

SECTION 2. And be it further enacted, that no action, plea, prosecution or proceeding in any criminal cause now pending, or which may be pending when this act takes effect, shall be affected by the repeal of the laws under which it originated, but the same shall proceed in all respects as if no such repeal had taken place ; except that all proceedings had after the time this act takes effect shall be conducted according to its provisions.

SECTION 3. The provisions of this Code shall regulate proceedings in all criminal actions, and shall be the rule on all subjects of which it treats, from and after the first day of February, A. D. 1857.

SECTION 4. This act shall take effect on the first day of February, 1857, and from and after that time all laws and parts of laws now in force which regulate or refer to the prevention, suppression, prosecution and proceedings for the punishment of crime shall stand repealed.

Approved, 26th August, 1856.

NOTE.—In the enrolled copy of the Code, Article 412 follows Article 410, which is the only error of this kind made in the enrollment of the bill. On page 173 there is an error of the press, arising from a mistake in the copy furnished for publication: Article 908 should read 907; Article 909 should read 908, and the following Article should have been inserted as

ARTICLE 909. When a free person of color is arrested under a warrant issued by a Magistrate, he shall be brought by the officer making the arrest before such Magistrate.

I N D E X

TO THE

CODE OF CRIMINAL PROCEDURE.

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