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THE

# PENAL CODE

OF

THE STATE OF TEXAS.

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ADOPTED BY THE SIXTH LEGISLATURE.

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1857.

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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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TEXAS STATE LIBRARY  
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# THE PENAL CODE.

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*Executive Order*

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.**

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### **GENERAL PROVISIONS RELATING TO THE WHOLE CODE.**

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#### **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.

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. 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.

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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



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.

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## TITLE II.

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### 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.

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## TITLE III.

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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.

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## OF OFFENCES AND PUNISHMENTS.

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### 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.

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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.

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### 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.

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.

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.

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## OF THE PENITENTIARY.

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### 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.

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### 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.

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## CHAPTER V.

### OF THE DUTIES OF THE SUPERINTENDENT AND UNDERKEEPER.

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#### § 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.

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§ 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.

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## 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.

## 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.

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## 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.

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## 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.

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## CHAPTER X.

### OF THE TREATMENT OF CONVICTS AND OF PRISON DISCIPLINE.

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#### § 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.

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§ II.

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*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.

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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.

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### 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.

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## TITLE IV.

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### OF THE HOUSE OF CORRECTION.

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#### 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.

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## 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.



**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.

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## TITLE V.

OF  
PRINCIPALS, ACCOMPLICES AND ACCESSARIES.

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### 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.

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## 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.

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\* 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.

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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.

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## TITLE VI.

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

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#### 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.

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.

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.

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.

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#### 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.

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## CHAPTER V.

### DEALING IN FRAUDULENT LAND CERTIFICATES.

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.

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, &amp;C., &amp;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.

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.

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

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#### CHAPTER I.

##### BRIBERY.

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.

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## TITLE VIII.

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### OF OFFENCES AFFECTING THE RIGHT OF SUFFRAGE.

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#### 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.

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## 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.

## 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.

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## 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.

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## TITLE IX.

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### 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. 290<sup>a</sup>\* 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.

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\* 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.** 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.

**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.

**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-

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.

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### 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.

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.

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-



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.

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### § 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.

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§ II.

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*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.

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§ III.

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*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-

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.

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§ IV.

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*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 *malfesance 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.



# TITLE XI.

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## OF OFFENCES AGAINST THE PUBLIC PEACE.

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### 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.

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## 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.

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\* 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.

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**TITLE XII.**

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**OFFENCES AGAINST PUBLIC MORALS, DECENCY  
AND CHASTITY.**

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**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.

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.

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.

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## CHAPTER II.

### OF INCEST AND ADULTERY..

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.

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

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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.

# TITLE XIII.

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## OF OFFENCES AGAINST PUBLIC POLICY AND ECONOMY.

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### 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.

## 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.

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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.

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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## 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.

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.

# TITLE XIV.

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## OF OFFENCES AFFECTING PUBLIC HEALTH.

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### CHAPTER I.

#### OF OCCUPATIONS INJURIOUS TO HEALTH.

ARTICLE 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.

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### CHAPTER II.

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

ARTICLE 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.

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## TITLE XV.

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

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#### 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...

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 TITLE XVI.
 

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 OF OFFENCES AGAINST TRADE AND COMMERCE  
 AND THE CURRENT COIN.
 

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## 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.

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.

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## 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.

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.

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### 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.

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## 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.

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## 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.



# TITLE XVII.

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## OF OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

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### CHAPTER I.

#### OF ASSAULT AND ASSAULT AND BATTERY.

##### §I.

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#### *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*."

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§ II.

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*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.

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§ II.

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*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.

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CHAPTER III.

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

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.

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.

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.

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 § I.
 

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*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.

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 § II.
 

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*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.

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.

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## CHAPTER V.

### OF FALSE IMPRISONMENT, KIDNAPPING AND ABDUCTION.

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#### § I.

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#### *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, he shall suffer double the punishment prescribed in the preceding Article.

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§ II

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*Of Kidnapping.*

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.

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§ III.

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*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.

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.

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## 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.

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## 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.

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## 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.

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.

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## 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.

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 § I.
 

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*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.

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 § II.
 

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*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.

*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.

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.

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§ IV.

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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.

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§ 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.

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## 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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 § 1.
 

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*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.

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\* 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.

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§ II.

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*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.

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.

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## CHAPTER XIII.

### OF MANSLAUGHTER.

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#### § I.

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#### *Definition.*

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



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.

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.

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.

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§ II.

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*Punishment.*

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.

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CHAPTER XIV.

OF DUELLING.

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.

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## CHAPTER XV.

### OF MURDER.

ARTICLE 607. Murder is voluntary homicide committed with deliberate design, by whatever means perpetrated, when

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.

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,

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.

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.

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*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,

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

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\* 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.

**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.

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## TITLE XVIII.

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### OF OFFENCES AGAINST REPUTATION.

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#### CHAPTER I.

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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,

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\* 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.

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## OF OFFENCES AFFECTING SLAVES AND SLAVE PROPERTY.

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### 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.

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.

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## CHAPTER III.

## STEALING OR ENTICING A SLAVE.

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.

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.

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.

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.

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#### 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.

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## 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.

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CHAPTER VIII.

## CRUEL TREATMENT OF SLAVES.

ARTICLE 670. If any person shall unreasonably abusé 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.

**ART. 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.

**ART. 674.** If, by reason of abuse or cruel treatment to a slave, death shall result, the offence is murder.

**ART. 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.

**ART. 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.

**ART. 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.

**ART. 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.

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## OF OFFENCES AGAINST PROPERTY OTHER THAN SLAVES..

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### 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.

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## 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.

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.

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.

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.

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.

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### 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.

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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.

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.

ART. 713. If any person shall wilfully kill, maim, wound, poison, or disfigure any horse, gelding, mare, jack, jenny, 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.

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.

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## 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.

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## 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 day time.

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

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\* 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.

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.

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.

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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.

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## CHAPTER IX.

### OF THEFT. .

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#### § I.

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#### *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.

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.

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.

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.

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.

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.

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§ II.

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*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.

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§ III.

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*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.

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§ IV.

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*Theft of Animals.*

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.

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.

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§ V.

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*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.

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§ VI.

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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.

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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.

## 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.

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.

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.

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.

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. 781. 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.

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## TITLE XXII.

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### 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.

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## OF OFFENCES COMMITTED BY SLAVES AND FREE PERSONS OF COLOR.

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### 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.

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.

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.

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### 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 :

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.

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.

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### OF THE PUNISHMENT OF SLAVES AND FREE PERSONS OF COLOR.

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#### CHAPTER I.

##### OF SLAVES.

##### § I.

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##### *General Provisions.*

ARTICLE 811. Slaves are not punishable by fine, or by imprisonment in the Penitentiary or House of Correction.

ART. 812. Slaves are subject to the following punishments:

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.

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.

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.

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§ 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.

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.

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.

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.

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.

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.

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.

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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.

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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*a* is not numbered at all. Article 290*a* is numbered 290, being the same as the preceding Article. Article 362*a* 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*a* is numbered 612, the same as the preceding Article. Article 622*a* is numbered 622, the same as the preceding Article. The number of Article 725*a* 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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TO  
THE PENAL CODE.

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