THE CODE

OF

CRIMINAL PROCEDURE

OF

THE STATE OF TEXAS.

ADOPTED BY THE SIXTH LEGISLATURE.

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TABLE OF CONTENTS.

PAGE.

PREAMBLE AND ENACTING SECTION..... 3

INTRODUCTORY TITLE.

CHAPTER I. Containing General Provisions..... 5

II. The general duties of officers charged with the enforcement of the Penal Law..... 9

SECTION I. The Attorney General and the District Attorney..... 9

II. Magistrates..... 10

III. Peace officers..... 11

IV. Clerk of the District Court..... 13

CHAPTER III. Containing definitions..... 13

IV. Divisions of the Code..... 14

PART I.

OF THE COURTS HAVING ORIGINAL JURISDICTION OF CRIMINAL ACTIONS..... 15

TITLE I.

Of the Supreme Court..... 15

TITLE II.

Of the District Courts..... 16

TITLE III. PAGE.

Of the Justices', Mayors' and Recorders' Courts..... 17

PART II.

OF THE PREVENTION AND SUPPRESSION OF OFFENCES, AND OF THE WRIT OF HABEAS CORPUS..... 18

TITLE I.

Of preventing offences by the acts of private persons..... 18

TITLE II.

Of preventing offences by the acts of Magistrates and other officers..... 19

CHAPTER I. Of the duty of Magistrates and other officers in preventing offences..... 19

II. Proceedings before Magistrates for the purpose of preventing offences..... 21

III. Of the suppression of riots..... 24

TITLE III.

Of the suppression of offences in their nature permanent..... 26

CHAPTER I. Offences which affect public health..... 26

II. Suppression of offences which are injurious to property held in common for the use of the public..... 27

III. Suppression of offences affecting reputation..... 28

IV. Of the suppression of offences against personal liberty..... 29

SECTION I. Definition and object of the writ..... 29

II. By whom and when granted..... 30

III. Service and return of the writ and proceedings thereon..... 33

IV. General provisions..... 39

PART III.

OF PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT OR INFORMATION IN THE DISTRICT COURTS..... 42

TITLE I.

Of the time and place of commencing and prosecuting criminal actions.... 42

CHAPTER I. The time within which criminal actions may be commenced, 42

II. Of the county within which offences may be prosecuted.... 43

TITLE II.

PAGE.

Of arrest, commitment and bail 46
CHAPTER I. Of arrest without warrant 46
II. Of arrest under warrant 47
III. Of the commitment or discharge of the accused 50
IV. Of bail 55
SECTION I. General rules applicable to all cases of bail 55
II. Surrender of the principal by his bail 58
III. Bail before the examining court 60
IV. Bail by witnesses 62

TITLE III.

Of search warrants 63
CHAPTER I. General rules 63
II. When and how a search warrant may be issued 64
III. Of the execution of search warrants 67
IV. Proceedings on the return of the search warrant 68

TITLE IV.

Of the proceedings subsequent to commitment or bail, and prior to trial 71
CHAPTER I. Of the organization of the Grand Jury 71
II. Of the duties, privileges and power of the Grand Jury 76
III. Of indictments and informations 79
IV. Of proceedings preliminary to trial 83
SECTION I. Of enforcing the attendance of the defendant and of forfeiture of bail 83
II. Of witnesses and the manner of enforcing their attendance 88
III. Service of a copy of the indictment 92
IV. Of arraignment and of proceedings where no arraignment is necessary 92
V. Of the pleadings in criminal actions 95
VI. Of the argument and decision of motions, pleas and exceptions 98
VII. Of continuances 101
VIII. Change of venue 103
IX. Of dismissing prosecutions 105

TITLE V.

Of trial and its incidents 106

PAGE

CHAPTER I. Of the mode of trial....106
II. Formation of the jury....107
III. Of challenges....110
IV. Of trial before the jury....112
V. Of the verdict....119
VI. Of evidence in criminal actions....121
SECTION I. General rules....121
II. Of persons who may testify....122
III. Evidence as to particular offences....124
IV. Of dying declarations and of the confessions of the defendant....125
V. Miscellaneous provisions....126

TITLE VI.

Of proceedings after verdict....127
CHAPTER I. Of new trials....127
II. Arrest of judgment....129
III Judgment and its incidents....130
SECTION I. Judgment in cases of felony....130
II. Judgment in cases of misdemeanor....132
CHAPTER IV Execution of judgments....134
SECTION I Collection of pecuniary fines....134
II. Enforcing the judgment in misdemeanors where the penalty is imprisonment and in felonies less than capital....135
III. Execution of the penalty of death....136

TITLE VII.

Of appeals....137

TITLE VIII.

Miscellaneous proceedings....145
CHAPTER I. Deposition of witnesses....145
SECTION I. When taken....145
II. Persons authorized to take depositions and the manner of taking and returning them....146
III. Of reading depositions in criminal actions....148
CHAPTER II. Of inquiry as to insanity of the defendant....148
III Disposition of property stolen....150

PAGE.

CHAPTER IV. Appropriation of fines and moneys collected upon recognizances, bail bonds and other like undertakings.....152

V. Of remitting fines and forfeitures, commutation of punishments and reprieves.....153.

PART IV.

Of proceedings in inferior tribunals, and of certain special proceedings of a criminal nature.....155

TITLE I.

Of proceedings in Justices' and Mayors' courts.....155

CHAPTER I. General provisions.....155

II. Of the arrest of the defendant.....156

III. Of the trial and its incidents.....157

IV. Of the judgment and execution.....16

TITLE II.

Of Coroners' inquests.....161

TITLE III.

Of fugitives from Justice.....166

TITLE IV.

Of vagrants.....168

TITLE V.

Of disorderly persons.....170

TITLE VI.

Of proceedings against free persons of color remaining in the State in violation of law.....171

TITLE VII.

Of proceedings before Justices of the Peace and Mayors against slaves who hire their time, or are hired to other slaves or to free persons of color.....173

PAGE.

TITLE VIII.

Of reports relative to crime 177

PART V.

Of costs in criminal actions 179

TITLE I.

Taxation of costs 179

TITLE II.

Of costs paid by the State 180

TITLE III.

Of costs to be paid by counties and the manner of enforcing collection 181

TITLE IV.

Of costs paid by the defendant 184

CHAPTER I. In the Supreme and District Courts 184

II In Justices' Courts 185

TITLE V.

Of costs to be paid by a witness 187

FINAL TITLE 187

THE CODE

OF

CRIMINAL PROCEDURE.

AN ACT

TO ESTABLISH A CODE OF CRIMINAL PROCEDURE FOR THE STATE OF TEXAS.

WHEREAS, it is the duty of every Government to prescribe plain rules in reference to the prevention and prosecution of crime, by means of which the rights of citizens shall be protected, the innocent acquitted and the guilty brought to certain punishment, which rules ought to be definite and easy of comprehension, so that every officer may understand his duties and every citizen his rights. Therefore,

Be it enacted by the Legislature of the State of Texas,

SECTION 1. The following Code is hereby established, and shall be called The Code of Criminal Procedure.

TEXAS STATE LIBRARY
Austin, Texas

INTRODUCTORY TITLE.

CHAPTER I.

CONTAINING GENERAL PROVISIONS.

ARTICLE 1. It is hereby declared that this Code is intended to embrace fully all the rules applicable to the prevention and prosecution of offences against the laws of this State. Its leading objects are to destroy all technical rules derived from other systems of law, and to make the rules of proceeding, in respect to the prevention and punishment of offences, plain and intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them.

It seeks, 1st. To adopt measures for preventing the commission of crime.

2d. To exclude the offender from all hope of escape.

3d. To ensure a trial with as little delay as shall be consistent with the ends of justice.

4th. To bring to the investigation of each offence, on the trial, all the evidence tending to produce conviction or acquittal.

5th. To ensure a fair and impartial trial, and

6th. The certain execution of the sentence of the law when declared.

ART. 2. In order to collect together, for the convenience of officers and all others charged with the enforcement of the laws, the material provisions of the Constitution of this State respecting the prosecution of offences, the following provisions of said instrument are here inserted :

ART. 3. No citizen of this State shall be deprived of life, liberty, property or privileges, outlawed, exiled, or in any manner disfranchised, except by due course of the law of the land. [*Bill of Rights, Section* 16.

ART. 4. In all criminal prosecutions, the accused shall have a speedy public trial by an impartial jury; he shall not be compelled to give evidence against himself; he shall have the right of being heard by himself or counsel, or both—shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor; and no person shall be holden to answer for any criminal charge, but on indictment or information, except in cases arising in the land or naval forces, or offences against the laws regulating the militia. [*Bill of Rights, Section* 8.

ART. 5. The people shall be secure in their (persons,) houses, papers and possessions from all unreasonable seizures, or searches; and no warrant to search any place or seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation. [*Bill of Rights, Section* 7.

ART. 6. All prisoners shall be bailable by sufficient sureties, except for capital offences when the proof is evident or the presumption great; but this provision shall not be so construed as to prohibit bail after indictment found, upon an examination of the evidence by a Judge of the Supreme or District Court, upon the return of a writ of habeas corpus, returnable in the county where the offence is committed.
[*Bill of Rights, Section* 9.

ART. 7. The privilege of the writ of habeas corpus shall not be suspended, except when, in case of rebellion or invasion, the public safety may require it.
[*Bill of Rights, Section* 10.

ART. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All Courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law. [*Bill of Rights, Section* 11.

ART. 9. No person, for the same offence, shall be twice put in jeopardy of life or limb; nor shall a person be again put upon trial for the same offence, after a verdict of not guilty; and the right of trial by jury shall remain inviolate.
[*Bill of Rights, Sec.* 12.

ART. 10. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the Court, as in other cases. [*Bill of Rights, Sec.* 6.

ART. 11. Electors, in all cases, shall be privileged from arrest during their attendance at elections, and in going to and returning from the same, except in cases of treason, felony, or breach of the peace. [*State Constitution, Art.* 3, *Sec.* 3.

ART. 12. Senators and Representatives shall, in all cases, except in treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened.

[*State Constitution, Art.* 3, *Sec.* 16.

ART. 13. Justices of the Peace shall have such civil and *criminal* jurisdiction as shall be provided for by law.

[*State Constitution, Art.* 4, *Sec.* 17.

ART. 14. In all cases where Justices of the Peace, or other judicial officers of inferior tribunals, shall have jurisdiction in the trial of causes, where the penalty for the violation of law is fine or imprisonment, (except in cases of contempt,) the accused shall have the right of trial by jury.

[*State Constitution, Art.* 4, *Sec.* 19.

ART. 15. The style of all writs and process shall be "The State of Texas." All prosecutions shall be carried on in the name and by the authority of the "State of Texas," and conclude "against the peace and dignity of the State."

[*State Constitution, Art.* 4, *Sec.* 9.

ART. 16. In the prosecution of slaves for crimes of a higher grade than petit larceny, the Legislature shall have no power to deprive them of an impartial trial by a petit jury.

[*Constitution, Art.* 8, *Sec.* 2.

ART. 17. No person, by the Bill of Rights, can be punished in any manner, for any offence, except by due course of law. It being deemed advisable to give Legislative construction to this provision, the same is declared to mean that no person shall be punished, except after *legal conviction in a Court of competent jurisdiction.*

ART. 18. No person for the same offence can be twice put in jeopardy of life or limb. This is intended to mean that no person can be subjected to a second prosecution for the same offence, after having been once prosecuted in a Court of competent jurisdiction and duly convicted.

ART. 19. The foregoing article will exempt no person from a second trial, who has been convicted upon an illegal indictment or information, and the judgment thereupon arrested, nor where a new trial has been granted to the defendant, nor where a jury has been discharged without rendering a verdict, nor for any case other than that of a legal conviction.

ART. 20. By the provisions of the Constitution, an acquittal of the defendant exempts him from a second trial, or a second prosecution for the same offence, however irregular the proceedings may have been; but if the defendant shall have been acquitted upon trial, in a Court having no jurisdiction of the offence, he may, nevertheless, be prosecuted again in a Court having jurisdiction.

ART. 21. Before conviction, a person imprisoned or detained in custody shall be subjected only to sufficient restraint to prevent his escape; but it is the duty of the officer having charge of such person to use the necessary force for his detention and to ensure his being brought to trial.

ART. 22. When a person is entitled to a trial by jury, he cannot be convicted of an offence except upon a plea of *guilty*, or upon the verdict of a jury duly rendered and recorded.

ART. 23. The proceedings and trials in all Courts shall be public.

ART. 24. The defendant, upon trial, shall be confronted with the witnesses, except in certain cases provided for in this Code, where depositions have been taken.

ART. 25. The provisions of this Code shall be liberally construed, so as to attain the objects intended by the Legislature, the prevention, suppression and punishment of crime.

ART. 26. The defendant to a criminal prosecution for any offence may waive any right secured to him by law, except the right of trial by jury when he has pleaded not guilty.

ART. 27. Whenever it is found that this Code fails to provide a rule of procedure in any particular state of case which may arise, and is therefore defective, the rules of the Common Law shall be applied and govern when they are not inconsistent with the general principles on which this system of procedure is founded.

CHAPTER II.

THE GENERAL DUTIES OF OFFICERS CHARGED WITH THE ENFORCEMENT OF THE PENAL LAWS.

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§ 1.

The Attorney General and the District Attorney.

ARTICLE 28. It is the duty of the Attorney General to represent the State in all criminal cases in the Supreme Court, except in cases where he may have been employed adversely to the State previously to his election; and he shall not, except in such cases, appear as counsel against the State in any Court.

ART. 29. He shall, also, in cases of felony, represent the State in proceedings before an examining court, or on the hearing of applications under habeas corpus, if he be in the county where such proceeding takes place, and be notified thereof.

ART. 30. It is the duty of each District Attorney to represent the State in all criminal cases, in the District Courts of his District, except in cases where he has been before his election employed adversely, and he shall not, except in such case, appear as counsel against the State in any Court.

ART. 31. He shall, also, when any criminal proceeding is had before an examining court, or before a Judge upon habeas corpus, represent the State, if he is at the time within the county where such proceeding is had.

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§ II.

Magistrates.

ARTICLE 32. It is the duty of every officer, known in this Code as a "Magistrate," to preserve the peace within his jurisdiction, by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders, by the use of lawful means, in order that they may be brought to punishment.

ART. 33. A Chief Justice of a county, County Commissioner, Justice of the Peace, or Coroner, who, when legally applied to, refuses to issue process, or who knowingly and corruptly refuses to discharge a duty imposed upon him by the provisions of this Code, is guilty of an offence for which he is subject to removal, upon trial and conviction.

§ III.

Peace Officers.

ARTICLE 34. It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose he shall use all lawful means. He shall, in every case where he is authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime. He shall execute all lawful process issued to him by any Magistrate or Court. He shall give notice to some Magistrate of all offences committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper Magistrate or Court and be brought to punishment.

ART. 35. Any peace officer who willfully neglects to execute process in a criminal case, or who willfully fails or refuses to interfere for the preservation of the peace, or for the arrest of offenders, when authorized by law to do so, is guilty of an offence, for which, on conviction, he is liable to be removed from office, and shall incur such other punishment as may be prescribed by law.

ART. 36. A warrant of arrest may be executed by any peace officer into whose hands it may come, except in certain special cases provided for in this Code.

ART. 37. Each Sheriff is the keeper of the jail of his county, and responsible for the safe keeping of all prisoners committed to his custody.

ART. 38. When a prisoner is committed to jail by lawful warrant from a Magistrate or Court, he shall be placed in jail by the Sheriff; and it is a violation of duty on the part of any Sheriff to permit a defendant so committed to remain out of jail, except that he may, when a defendant is committed for want of bail, or when he arrests after indictment or information in a bailable case, give the person arrested a reasonable time to procure bail, but in the meanwhile he shall so guard the accused as to prevent his escape.

ART. 39. The Sheriff shall, at each term of the Court, give notice to the District Attorney as to all prisoners in his custody, and of the authority under which he detains them.

ART. 40. The Sheriff may appoint a jailor to take charge of the jail, and supply the wants of a person therein confined; and the person so appointed is responsible for the safety of prisoners, and liable to punishment, as provided by law, for negligently or willfully permitting a rescue or escape. But the Sheriff shall, in all cases, exercise a supervision and control over the jail.

ART. 41. The Sheriff shall be paid by the County Court fifty cents a day for each prisoner committed to his custody, during the time such prisoner is in jail.

ART. 42. When it becomes necessary to employ a guard for the safe keeping of prisoners, the Sheriff shall be allowed one dollar a day for each person employed as a guard, and an additional allowance for the board of such guard.

ART. 43. When there is no jail in a county, the Sheriff may rent a suitable house and employ guards, all of which expenses shall be paid by the County Court of the proper county.

ART. 44. Whenever a peace officer meets with resistance in discharging any duty imposed upon him by law, he shall summon a sufficient number of citizens of his county to overcome the resistance, and all persons summoned are bound to obey; and if they refuse are guilty of an offence.

ART. 45. The peace officer who has summoned any person to assist him in performing any duty, shall report such person if he refuse to obey, to the District Attorney of the proper district in order that he may be prosecuted for the offence.

ART. 46. Wherever a duty is imposed by this Code upon the Sheriff, the same duty may lawfully be performed by his deputy, and when there is no Sheriff in a county, the duties of that office, as to all proceedings under the criminal law, devolve upon the officer, who, under the law, is empowered to discharge the duties of Sheriff in cases of vacancy in the office.

§ IV.

Clerk of the District Court.

ARTICLE 47. It is the duty of every Clerk of the District Court to receive and file all papers in respect to criminal proceedings, to issue all process in such cases, and to perform all other duties imposed upon him by this Code, or the penal laws of the State, and a willful failure to perform any such duties renders him liable to prosecution for an offence, in accordance with the provisions of the Penal Code.

ART. 48. Wherever a duty is imposed upon the Clerk of the District Court the same may be lawfully performed by his deputy.

CHAPTER III.

CONTAINING DEFINITIONS.

ARTICLE 49. All words and phrases used in this Code are to be taken and understood in their usual acceptation, in common language, except where their meaning is particularly defined in this or the Penal Code.

ART. 50. The words and terms made use of in this Code, unless herein specially excepted, have the meaning which is given to them in the Penal Code, and are to be construed and interpreted as therein declared.

ART. 51. A criminal action is prosecuted in the name of the State of Texas against the person accused, and is conducted by some officer or person acting under the authority of the State, in accordance with its laws.

ART. 52. Either of the following officers is a "Magistrate" within the meaning of this Code: the Judges of the Supreme Court, the Judges of the District Court, the Chief Justice of a County, either of the County Commissioners, Justices of the Peace, the Mayor of an incorporated city or town, and in certain special cases, the Coroner.

ART. 53. The following are "peace officers:" the Sheriff and his deputies, Constables, Coroners, the Marshal of an incorporated town or city, and any private person specially appointed to execute criminal process.

ART. 54. The general term "officers" includes both magistrates and peace officers.

ART. 55. When a Magistrate sits for the purpose of enquiring into a criminal accusation against any person, this is called an "Examining Court."

CHAPTER IV.

DIVISIONS OF THE CODE.

ARTICLE 56. This Code is divided into five parts.

The first relates to the courts having original jurisdiction of criminal actions, and defines their jurisdiction.

The second relates to the prevention of offences, and the suppression of such as are in their nature continuous, and defines specially the mode of proceeding under the writ of habeas corpus.

The third relates to proceedings in such criminal actions as are by law subject to be prosecuted by indictment or information in the District Court, including all proceedings had from the time of the commission of the offence to the final execution of the sentence of the law.

The fourth relates to proceedings in inferior tribunals in cases of offences which they have jurisdiction to try, and to certain special proceedings of a criminal nature.

The fifth relates to costs in criminal proceedings.

PART I.

OF THE COURTS HAVING ORIGINAL JURISDICTION IN CRIMINAL ACTIONS.

ARTICLE 57. The following Courts have original jurisdiction of criminal actions.

1. The Supreme Court.
2. The District Courts.
3. The Justices Courts, and the Mayors and other Courts of incorporated towns and cities.

TITLE I.

OF THE SUPREME COURT.

ARTICLE 58. The Supreme Court, or either of the Judges thereof, has original jurisdiction to enquire into the cause of the detention of persons imprisoned or detained in custody, and for this purpose may issue the writ of habeas corpus, and upon the return thereof may remand such person to custody, admit to bail, or discharge the person imprisoned or detained, as the law and the nature of the case may require.

TITLE II.

OF THE DISTRICT COURTS.

ARTICLE 59. The District Courts have original jurisdiction of all criminal actions.

By virtue of this general jurisdiction, they have power:

1. To enquire, by the intervention of a grand jury, of all offences committed or triable within their respective jurisdictions.

2. To hear and determine all prosecutions in the name of the State, by indictment or information, for all offences committed within their respective jurisdictions.

3. To enquire into the cause of the detention of persons imprisoned in the jails of their respective counties, and make all necessary orders for their recommitment, discharge, or admission to bail, by the writ of habeas corpus, or in such other manner as may be prescribed by law.

4. To exercise all other powers conferred by this Code.

ART. 60. Each District Judge has power to issue the writ of habeas corpus, and have brought before him any person imprisoned or otherwise illegally detained in custody, in any county, whether within or out of his district, and make such order on the return of the writ as the law and the facts of the case may require, whether the person detained has been indicted or not, under the restrictions herein prescribed.

TITLE III.

OF THE JUSTICES, MAYORS AND RECORDERS COURTS.

ARTICLE 61. Justices of the Peace have jurisdiction to try and determine criminal actions against persons accused of the following offences:

1. Simple Assaults and Batteries.
2. Affrays.
3. Violations of the penal law with regard to gaming, where the highest penalty does not exceed one hundred dollars.
4. Violations of the law prohibiting the sale of liquor to slaves and free persons of color, and trading with slaves.
5. Petty offences committed by slaves and free persons of color.
6. Cases of vagrants and disorderly persons.

ART. 62. The jurisdiction of Justices' Courts is concurrent with that of the District Courts as to the offences named in the preceding Article, except as to the jurisdiction conferred in the fifth and sixth subdivisions thereof, in which cases the Justices of the Peace have exclusive jurisdiction.

ART. 63. The Justices' Courts have no jurisdiction to try offences where deadly weapons were used, or attempted to be used, by the party accused.

ART. 64. They have all such other jurisdiction in criminal actions as is conferred by this Code, under the rules and regulations prescribed by the law.

ART. 65. Justices of the Peace may sit at any time to try criminal causes over which they have jurisdiction. Mayors and Recorders of incorporated towns and cities have the same jurisdiction as Justices of the Peace within the limits of their respective incorporations, and all the provisions of this Title have reference to Mayors and Recorders as well as to Justices' Courts.

PART II.

OF THE PREVENTION AND SUPPRESSION OF OFFENCES, AND OF THE WRIT OF HABEAS CORPUS.

TITLE I.

OF PREVENTING OFFENCES BY THE ACT OF A PRIVATE PERSON.

ARTICLE 66. The commission of offences may be prevented either

1. By lawful resistance, or

2. By the intervention of the officers of the law.

Resistance to the offender may be made as hereinafter pointed out, either by the person about to be injured, or by some person in his behalf.

ART. 67. Resistance by the party about to be injured may be used to prevent the commission of any offence, which, in the Penal Code, is classed as an "offence against the person."

ART. 68. Resistance may also in like manner be made by the person about to be injured, to prevent any illegal attempt by force to take or injure property in his lawful possession.

ART. 69. The resistance which the person about to be injured may make, to prevent the commission of the offence, must be proportioned to the injury about to be inflicted. It must be only such as is necessary to repel the aggression.

ART. 70. If the person about to be injured in respect, either to his person or property, uses a greater amount of force to resist such injury than is necessary to repel the aggressor and protect his own person or property, he is himself guilty of an illegal act, according to the nature and degree of the force which he has used.

ART. 71. Any person other than the party about to be injured may also, by the use of necessary means, prevent the commission of the offence.

ART. 72. The same rules which regulate the conduct of the person about to be injured, in repelling the aggression, are also applicable to the conduct of him who interferes in behalf of such person. He may use a degree of force proportioned to the injury about to be inflicted, and no greater.

TITLE II.

OF PREVENTING OFFENCES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS.

CHAPTER I.

THE DUTY OF MAGISTRATES AND OTHER OFFICERS IN PREVENTING OFFENCES.

ARTICLE 73. It is the duty of every Magistrate when he may have heard, in any manner, that a threat has been made by one person to do some injury to the person or property of another, immediately to give notice to some peace officer, in order that such peace officer may use lawful means to prevent the injury.

ART. 74. Wherever, in the presence or within the observation of a Magistrate, an attempt is made by one person to inflict an injury upon the person or property of another, it is his duty to use all lawful means to prevent the injury. This

may be done either by verbal order to a peace officer to interfere and prevent the injury, or by the issuance of an order of arrest against the offender, or by arresting the offender; for which purpose he may call upon all persons present to assist in making the arrest.

ART. 75. If within the hearing of a Magistrate one person shall threaten to take the life of another, he shall issue a warrant for the arrest of the person making the threat, or, in case of emergency, he may himself immediately arrest such person.

ART. 76. When the person making such threat is brought before the Magistrate, he may compel him to give security to keep the peace, or commit him to custody, in the manner hereafter provided.

ART. 77. It is the duty of every peace officer, when he may have been informed in any manner that a threat has been made by one person to do some injury to the person or property of another, to prevent the threatened injury, if within his power, and in order to do this he may call in aid any number of citizens in his county. He may take such measures as the person about to be injured might, for the prevention of the offence.

ART. 78. Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offence against the person or property of another, it is his duty to prevent it, and for this purpose he may summon any number of citizens of his county to his aid. He must use the amount of force necessary to prevent the commission of the offence, and no greater.

ART. 79. The conduct of peace officers, in preventing offences about to be committed in their presence, or within their view, is to be regulated by the same rules as are prescribed to the action of the person about to be injured. They may use all force necessary to repel the aggression.

CHAPTER II.

PROCEEDINGS BEFORE MAGISTRATES FOR THE PURPOSE OF PREVENTING OFFENCES.

ARTICLE 80. Whenever a Magistrate is informed upon oath, that an offence is about to be committed against the person or property of the informant, or of another, or that any person has threatened to commit such offence, it is his duty immediately to issue a warrant for the arrest of the accused, that he may be brought before such Magistrate, or before some other named in the warrant.

ART. 81. When the person accused has been brought before the Magistrate, he shall hear proof as to the accusation, and if he be satisfied that there is just reason to apprehend that the offence was intended to be committed, or that the threat was seriously made, he shall make an order that the accused enter into bond in such sum as he may in his discretion require, conditioned that he will not commit such offence, and that he will keep the peace towards the person threatened, or about to be injured, and towards all others, for one year from the date of such bond.

ART. 82. If the defendant refuse to give bond, he shall be committed to the jail of the county, or if there be no jail, to the custody of the Sheriff.

ART. 83. The warrant issued by a Magistrate in cases provided for in Articles 75 and 80, shall be sufficient if it state the name of the defendant, or, if unknown, describe him, and set forth in plain words the nature of the accusation against him, be signed by the Magistrate and dated.

ART. 84. The bond taken by the Magistrate in the cases provided for in Article 81, shall be sufficient if it be payable to the State of Texas, recite plainly the nature of the accusation against the defendant, be for some certain sum, and be signed by the defendant and his surety, and dated.

No error of form shall vitiate such bond, and no error in the proceedings, prior to the execution of the bond, shall be available as a defence in an action thereupon.

ART. 85. If the Magistrate be of opinion from the evidence, that there is no good reason to apprehend that the offence was intended or will be committed, or that no serious threat was made by the defendant, he shall discharge the person so accused, and may, in his discretion, tax the cost of the proceeding against the party making the complaint.

ART. 86. If the accused be committed for refusing or failing to give bond, he shall be discharged by any Magistrate upon his afterwards entering into bond in such amount as was fixed by the Magistrate who committed him.

ART. 87. If the condition of the bond be forfeited, it shall be sued upon in the name of the State of Texas, by the District Attorney, and the full amount of the same may be recovered against the principal and sureties.

ART. 88. Actions upon such bonds shall be commenced within two years from the breach of the same, and shall be governed by the rules applicable to civil actions, except that the sureties may be sued without joining the principal. It shall only be necessary in order to entitle the State to recover, to prove that the defendant did commit the offence which he bound himself not to commit, or failed to keep the peace according to his undertaking.

ART. 89. A surety upon any such bond may, at any time before a breach thereof, exonerate himself from the obligation of the same, by delivering to the Magistrate the person of the defendant, and the Magistrate shall, in that case, again require of the defendant bond with other surety, and the same proceedings be had as in the first instance.

ART. 90. Magistrates taking bonds under the provisions of this Chapter, shall be governed as to the amount of the bond by the pecuniary circumstances of the accused, and the nature of the offence threatened or about to be committed.—And they shall require the sureties of a defendant to make oath as to the value of their property, in the manner pointed out with regard to recognizances and bail bonds.

ART. 91. When the information given to the Magistrate is that the defendant has threatened the life of a person, he shall, in addition to the bond heretofore spoken of, require

also of the defendant a bail bond with security, conditioned that he will appear at the next term of the District Court of the county to answer the accusation, which bail bond shall be filed with the Clerk of the District Court, shall have the same force as other bail bonds, and may be forfeited in the same manner.

ART. 92. When, from the nature of the case and the proof offered to the Magistrate, it may appear necessary and proper, he shall have a right to order any peace officer to protect the person or property of any individual threatened; and such peace officer shall have the right to summon aid by requiring any number of citizens of his county to assist in giving the protection.

ART. 93. The District Court, when in session, may, upon complaint made, cause the arrest of any person who might be arrested by a Magistrate under the provision of any of the preceding Articles, and require such person to enter into recognizance for the same purposes for which a Magistrate may require bond, may commit in default of security or discharge, according to the nature of the case.

ART. 94. All persons have a right to prevent the consequences of theft, by seizing any personal property which has been stolen, and bringing it with the supposed offender, if he can be taken, before a Magistrate for examination, or delivering it to a peace officer for that purpose. To justify such seizure there must, however, be reasonable grounds to suppose the thing to be stolen, and the seizure must be openly made, and the proceedings had without delay.

ART. 95. If any person shall make oath, and shall convince the Magistrate that he has good reason to believe that another is about to publish, sell, or circulate, or is continuing to sell, publish, or circulate any libel against him, or any such publication as is made an offence by the Penal Law of the State, the person accused of such intended publication may be required to enter into bond not to sell, publish, or circulate such libellous publication, and the same proceedings be had as in the cases before enumerated in this Chapter. In case the accused is found subject to the charge and required to give bond, the cost of the proceeding shall be taxed against him.

CHAPTER III.

OF THE SUPPRESSION OF RIOTS.

ARTICLE 96. When any officer, authorized to execute process, is resisted, or when he has sufficient reason to believe that he will meet with resistance in executing the same, he may command as many of the citizens of his county as he may think proper, and the Sheriff may call any military company in the county to aid him in overcoming the resistance, and, if necessary, in seizing and arresting the persons engaged in such resistance, so that they may be brought to trial. .

ART. 97. It is a misdemeanor to refuse to obey an officer, when summoned by him for the purposes set forth in the preceding Article.

ART. 98. If it be represented to the Governor in such manner as to satisfy him that the power of the county is not sufficient to enable the Sheriff to execute process, he may, on application, order any military company of volunteers from another county to aid in overcoming such resistance.

ART. 99. Whenever a number of persons are assembled together in such a manner as to constitute a riot, according to the Penal Law of the State, it is the duty of every Magistrate or peace officer to cause such persons to disperse. This may either be done by commanding them to disperse, or by arresting the persons engaged, if necessary, either with or without warrant.

ART. 100. In order to enable the officer to disperse a riot, he may call to his aid the power of the county in the same manner as is provided where it is necessary for the execution of process.

ART. 101. If a Justice of the Peace, Mayor or any peace officer shall have notice of a riot, and shall fail to take measures necessary to suppress it, he is guilty of a misdemeanor.

ART. 102. The officer engaged in suppressing a riot, and those who aid him, are authorized and justified in adopting

such measures as are necessary to suppress the riot, but are not authorized to use any greater degree of force than is requisite to accomplish that object.

ART. 103. All the Articles of this Chapter, relating to the suppression of riots, apply equally to an unlawful assembly, as defined by the Penal Code.

ART. 104. Whenever, for the purpose of suppressing riots or unlawful assemblies, the aid of military companies is called, they shall obey the orders of the civil officer who is engaged in suppressing the same. Arms shall only be used where the rioters themselves are armed, and are using their arms. Nor shall it be permitted to fire upon the rioters except in cases of imminent peril, and in order to preserve the lives of the force engaged in suppressing the riot or other unoffending citizens.

ART. 105. The use of arms in suppressing a riot, if wantonly resorted to, or resorted to when it might have been suppressed without their use, is an offence.

ART. 106. For the purpose of suppressing riots, unlawful assemblies and other disturbances at elections, any Magistrate may appoint a sufficient number of special Constables. Such appointments shall be made to each special Constable, shall be in writing, dated and signed by the Magistrate, and shall recite the purposes for which such appointment is made, and the length of time the appointment is to continue, and before the same is delivered to such special Constable, he shall take an oath before the Magistrate to suppress, by lawful means, all riots, unlawful assemblies and breaches of the peace of which he may receive information, and to act impartially between all parties and persons interested in the result of the election.

ART. 107. Special Constables so appointed, shall, during the time for which they are appointed, exercise the powers and perform the duties properly belonging to peace officers.

TITLE III.

OF THE SUPPRESSION OF OFFENCES IN THEIR NATURE PERMANENT.

CHAPTER I.

OFFENCES WHICH AFFECT PUBLIC HEALTH.

ARTICLE 108. After an indictment or information has been presented against any person for carrying on a trade injurious to the health of those in the neighborhood, if it be charged in the indictment or information that any person has actually suffered in health on account of the carrying on of such trade or business, the Court shall have power, on the application of any one interested, and after hearing proof, both for and against the accused, to enjoin the defendant in such penalty as may be deemed proper not to carry on such occupation, or may make such other order respecting the manner and place of carrying on the same, as may be deemed advisable; and if, upon trial, the defendant be convicted, the injunction shall be made perpetual, and the party be required to enter into bond not to continue such occupation. If he refuse to give the bond, the Court may either commit the party to jail, or make an order requiring the Sheriff to seize upon the implements of trade, or the goods and property used in conducting the business, and destroy the same. After conviction for selling unwholesome food or liquor, or adulterated medicine, the Court shall enter up an order to the Sheriff to seize and destroy such as remains in the hands of the defendant, which order shall forthwith be executed by the Sheriff.

ART. 109. If bond be given, it shall be payable to the State of Texas in a reasonable amount, to be fixed by the Court; upon the breach thereof, it may be sued in the name of the State, by the District Attorney, and recovery had, upon

proving the breach, in the manner pointed out for suing on bonds, in Articles 87 and 88 : and the full amount shall be recovered.

ART. 110. It is sufficient proof of the breach of any bond taken under the provisions of this Chapter, to show that the party continued, after executing the same, to carry on the occupation which he bound himself to discontinue.

CHAPTER II.

SUPPRESSION OF OFFENCES WHICH ARE INJURIOUS TO PROPERTY HELD IN COMMON FOR THE USE OF THE PUBLIC.

ARTICLE 111. Whenever any building, or other property, is held in common for the use of the public, it is unlawful for any person to place an obstruction which shall prevent the free use of such public property.

ART. 112. Wherever any road, bridge, or the crossing of any stream, is made by the proper authority a public highway, it is unlawful for any person to place an obstruction across such highway, or in any other manner prevent the free use of the same by the public.

ART. 113. After indictment or information presented against any person for violating any provision of the two preceding Articles, any one in behalf of the public may apply to the Judge of the District Court of the proper county, and, upon hearing proof, such Judge, either in term time, or in vacation, may issue his written order to the Sheriff of the county, directing him to remove the obstruction, but the person giving the information shall be required to give bond with security, in an amount to be fixed by the Judge, to indemnify the accused, in case of acquittal, for the loss he sustains.

ART. 114. If the defendant to any such indictment, or information, be acquitted after a trial upon the merits of the case, he may maintain a civil action against the applicant in injunction and his sureties, and may recover the full amount of the bond, or such damages less than the full amount thereof as may be assessed by a jury, provided he shows on the trial, that the building or other property, in fact, belonged to him and not to the public, or in case the defendant was charged with obstructing a public highway, that the same was not, in fact, at the time he placed the obstruction or impediment thereupon, a public highway, established by proper authority, but was in fact his own property.

ART. 115. No mere defect of form shall vitiate any order or proceeding of the County Court in establishing a public highway.

CHAPTER III.

SUPPRESSION OF OFFENCES AFFECTING REPUTATION.

ARTICLE 116. On conviction for selling and publishing a libel, the court may, if it be shown that there are in the hands of the defendant, or other person, copies of such libel, intended for sale, publication, or distribution, order all such copies to be seized by the Sheriff and destroyed.

CHAPTER IV.

OF THE SUPPRESSION OF OFFENCES AGAINST PERSONAL LIBERTY.

ARTICLE 117. The writ of *Habeas Corpus* is the remedy to be used for the suppression of offences which affect the personal liberty of individuals.

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§ I.

Definition and Object of the Writ.

ARTICLE 118. A writ of Habeas Corpus is an order issued by a Court or Judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody, or under restraint.

ART. 119. The writ, as all other process, runs in the name of "The State of Texas." It is to be addressed to the person having another under restraint, or in his custody, describing as near as may be the name of the office, if any, of the person to whom it is directed, and the name of the person said to be detained. It shall fix the time and place of return, and be signed by the Judge, or by the Clerk, with his seal, where issued by a Court.

ART. 120. The writ of Habeas Corpus is not invalid, nor shall it be disobeyed for any want of form, if it substantially appear that it is issued by competent authority, and the writ sufficiently show the object and design of its issuance.

ART. 121. Every provision relating to the writ of Habeas Corpus shall be most favorably construed, in order to give effect to the remedy, and protect the rights of the person seeking relief under it.

§ II.

By whom and when Granted.

ARTICLE 122. The Supreme Court, or either of the Judges, the District Courts, or either of the Judges, have power to issue the writ of Habeas Corpus, and it is their duty, upon proper application, to grant the writ under the rules herein prescribed.

ART. 123. Before indictment found, the writ may be made returnable to any county of the State.

ART. 124. After indictment found, the writ must be made returnable in the county where the offence has been committed, on account of which the applicant stands indicted.

ART. 125. In all cases where a person is confined on a criminal accusation, and indictment has been found against him, he may apply to the Judge of the District Court for the district in which he is indicted, or if there be no Judge within the district, then to the Judge of any district whose residence is nearest to the court-house of the county in which the applicant is held in custody.

ART. 126. When application has been made to a Judge, under the circumstances set forth in the preceding Article, it shall be his duty to appoint a time when he will examine the cause of the applicant, and issue the writ returnable at that time, in the county where the offence is charged in the indictment to have been committed. He shall also specify some place in the county where he will hear the application.

ART. 127. The time so appointed shall be the earliest day which the Judge can devote to hearing the cause of the applicant, consistently with his other duties.

ART. 128. Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief.

ART. 129. The word *applicant*, as used in this Chapter,

refers to the person for whose relief the writ is asked, though, as above provided, the petition may be signed and presented by any other person.

ART. 130. The petition must state substantially :

1. That the person for whose benefit the application is made is illegally restrained in his liberty, and by whom—naming both parties, if their names are known—or, if unknown, designating and describing them.

2. When the party is confined, or restrained by virtue of any writ, order or process, or under color of either, a copy shall be annexed to the petition, or it shall be stated that a copy cannot be obtained.

3. When the confinement or restraint is not by virtue of any writ, order or process, the petition may state only that the party is illegally confined or restrained of his liberty.

4. There must be a prayer in the petition for the writ of Habeas Corpus.

5. Oath must be made that the allegations of the petition are true, according to the belief of the petitioner.

ART. 131. The writ of Habeas Corpus shall be granted without delay, by the Judge or Court receiving the petition, unless it be manifest by the statements of the petition itself, or some document annexed to it, that the party is entitled to no relief whatever.

ART. 132. A Judge of the District Court who has knowledge that any person is illegally confined, or restrained in his liberty within his district, may issue the writ of Habeas Corpus without any application being made for the same.

ART. 133. Whenever it shall be made to appear by satisfactory evidence, to a Judge of the Supreme or District Court, that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury, before he can obtain relief in the usual course of law, or whenever a writ of habeas corpus has been issued and disregarded, the Supreme or District Court, or either of the Judges, may issue a warrant to any officer of the law, or to any person specially named by said Court or Judge, directing him to take and bring such person before him, to be dealt with according to law.

ART. 134. Where it appears by the proof offered. under circumstances mentioned in the preceding Article, that the person charged with having illegal custody of the prisoner, is by such act guilty of an offence against the law, the Judge may, in the warrant, order that he be arrested and brought before him ; and upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require.

ART. 135. The officer charged with the execution of the warrant, shall bring the persons therein mentioned before the Judge or Court issuing the same, who shall inquire into the cause of the imprisonment or restraint, and make an order thereon, as in cases of habeas corpus, according to the rules laid down in this Chapter, either remanding into custody, discharging, or admitting to bail. the party so imprisoned or restrained.

ART. 136. The same power may be exercised by the officer executing the warrant, (and in like manner), in cases arising under the foregoing Articles, as is exercised in the execution of warrants of arrest, according to the provisions of this Code.

ART. 137. The words "confined," "imprisoned," "in custody," "confinement," "imprisonment," refer not only to the actual, corporal and forcible detention of a person, but likewise to any and all coercive measures by threats, menaces, or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits.

ART. 138. By "restraint" is meant that kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right.

ART. 139. The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law.

ART. 140. Where a person claiming to be free is held as

a slave, he may be relieved by habeas corpus, and if upon any such application the person so held is discharged, his discharge shall be evidence of his freedom against the person claiming him, unless such claimant shall, within three months thereafter, bring suit to establish his right to the services of the person so claimed.

ART. 141. Where a person has been committed to custody for failing to enter into bond, he is entitled to the writ of habeas corpus, if it be stated in the petition that there was no sufficient cause for requiring bail, or that the bail required is excessive; and if the proof sustains the petition, it will entitle the party to be discharged, or have the amount of the bail reduced according to the facts of the case.

ART. 142. When a Judge or Court authorized to grant writs of habeas corpus shall be satisfied, upon investigation, that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of his life, an order may be made for the removal of the prisoner to some other place, where his health will not be likely to suffer, or he may be admitted to bail when it appears that any species of confinement will endanger his life.

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§ III.

Service and Return of the Writ, and Proceedings thereon.

ARTICLE 143. The service of the writ may be made by any free white person capable of giving testimony in Court.

ART. 144. The writ may be served by delivering a copy of the original to the person who is charged with having the party under restraint, or in custody, and exhibiting the original if demanded; if he refuse to receive it, he shall be informed verbally of the purport of the writ. If he refuse admittance to the person wishing to make the service, or conceal himself, a copy of the writ may be fixed upon some conspicuous part of the house where such person resides, or conceals himself, or of the place where the prisoner is confined.

and the person serving the writ of habeas corpus shall in all cases, state fully, in making return, the manner and time of the service of the writ.

ART. 145. The return of a writ of habeas corpus under the provisions of the preceding Article, if made by any person other than an officer, shall be under oath.

ART. 146. The person on whom the writ of habeas corpus is served, shall immediately obey the same and make the return required by law, upon the copy of the original writ served on him, and this whether the writ be directed to him or not.

ART. 147. The return is made by stating in plain language upon the copy of the writ, or some paper connected with it:

1. Whether it is true or not, according to the statement of the petition, that he has in his custody or under his restraint, the person named or described in such petition.

2. By virtue of what authority, or for what cause he took and detains such person.

3. If he had such person in his custody or under restraint at any time before the service of the writ, and has transferred him to the custody of another, he shall state particularly to whom, at what time, for what reason, or by what authority he made such transfer.

4. He shall annex to his return the writ or warrant by virtue of which he holds the person in custody, if any writ or warrant there be.

ART. 148. The return as provided in Articles 146 and 147 must be signed and sworn to by the person making it.*

ART. 149. The person on whom the writ is served, shall bring also before the Judge the person in his custody or under his restraint, unless it be made to appear that by reason of sickness he cannot be removed, in which case another day may be appointed by the Judge or Court for hearing the cause and for the production of the person confined; or the application may be heard and decided without the production of the person detained, by the consent of his counsel.

ART. 150. The Court or Judge granting the writ of habeas corpus shall allow reasonable time for the production of the person detained in custody.

ART. 151. When service has been made in either of the modes pointed out in Article 144, upon a person charged with the illegal custody of another, if he refuse to obey the writ and make the return required by law, or where he refuses, as mentioned in Article 144, to receive the writ, or conceals himself, the Court or Judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such Court or Judge; and when such person shall have been arrested and brought before the Court or Judge, if he still refuse to return the writ, or do not produce the person in his custody, he shall be committed to prison and remain there until he is willing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding.

ART. 152. Any person disobeying the writ of habeas corpus, shall also be liable to a civil action at the suit of the party, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ, to be recovered in any Court of competent jurisdiction; and it shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, and one additional day for every twenty miles he must necessarily travel in carrying the person held from the place of his detention to the place where the application is to be heard, unless where further time is allowed in the writ for making the return thereto.

ART. 153. In case of the disobedience of the writ of habeas corpus, the person for whose relief it is intended may also be brought before the Court or Judge having competent authority, by an order for that purpose issued to any peace officer or person specially named.

ART. 154. It is a sufficient return to the writ of habeas corpus, that the person once detained has died, or that by some superior force he has been taken from the custody of the person making the return; but where any such cause shall be

assigned for not producing the applicant, the Court or Judge shall proceed to hear testimony, and the facts so stated in the return shall be proved by satisfactory evidence.

ART. 155. When a prisoner confined in jail shall die, the officer having charge of him shall forthwith report the same to the Coroner of the county, or any Justice of the Peace, and an inquest shall be held to ascertain the cause of his death; which may be done by calling in any number of physicians and surgeons. All the proceedings had in such cases shall be certified and returned to the District Court of the proper county, and be filed by the Clerk, a certified copy of which proceedings shall be sufficient proof of the death of the prisoner. at the hearing of an application under habeas corpus.

ART. 156. Whenever the District Attorney of the proper district is in the county where a cause is heard under habeas corpus, it is his duty, if the defendant is accused of a felony, to be present at the hearing, and represent the State; for which service he shall be paid the fee allowed by law. And if the District Attorney is not present at the hearing of such cause, the Judge shall appoint some well qualified practising attorney to represent the State, who shall be paid the same fee as is allowed District Attorneys for like services.

ART. 157. The Judge or Court before whom a person is brought by writ of habeas corpus, shall examine the writ and the papers attached to it, and if no legal cause be shown for the imprisonment or restraint, or if it appear that the imprisonment or restraint, though at first legal, cannot, for any cause, be lawfully prolonged, the applicant shall be discharged.

ART. 158. If it appear by the return and papers attached, that the party stands indicted for a capital offence, the Judge or Court shall nevertheless proceed to hear such testimony as may be offered, on the part both of the applicant and the State, and may either remand the defendant or admit him to bail, as the law and the facts of the case may justify.

ART. 159. In all cases where no indictment has been found, it shall not be deemed that any presumption of guilt has ari-

sen from the mere fact that a criminal accusation has been made before a competent authority.

ART. 160. The Judge or Court after having examined the return and all documents attached, and heard the testimony offered on both sides, shall, according to the facts and circumstances of the case, proceed either to remand the party into custody, admit him to bail, or discharge him: provided that no defendant shall be discharged after indictment, without bail.

ART. 161. If it shall appear that the applicant is detained or held under a warrant of commitment which is informal or void, yet, if from the document on which the warrant was based, or from the proof on the hearing of the habeas corpus, it appear that there is probable cause to believe that an offence has been committed by the prisoner, he shall not be discharged, but shall be committed or held to bail by the Court or Judge trying the application under habeas corpus.

ART. 162. Where, upon an examination under habeas corpus, it shall appear to the Court or Judge that there is probable cause to believe that an offence has been committed by the prisoner, he shall not be discharged, but shall be committed, or admitted to bail, according to the facts and circumstances of the case.

ART. 163. For the purpose of ascertaining the grounds on which an informal or void warrant has been issued, the Judge or Court may cause to be summoned the Magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such Magistrate, and the production of such papers, may be enforced by warrant of arrest, if necessary.

ART. 164. It shall not be necessary, on the trial of any cause arising under habeas corpus, to make up a written issue, though it may be done by the applicant for the writ. He may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance. If written denial on his part be not made, it shall be considered, for the purpose of investigation, that the statements of said re-

turn are contested by a denial of the same, and proof shall be heard accordingly, both for and against the applicant for relief.

ART. 165. The applicant shall have the right to open and conclude, by himself or counsel, the argument upon the trial under habeas corpus.

ART. 166. The Court or Judge, trying a cause under habeas corpus, may make such order as is deemed advisable or right, concerning the cost of bringing the defendant before him, and all other costs of the proceedings, awarding the same either against the person to whom the writ was directed, the person seeking relief, or may award no costs at all.

ART. 167. If a writ of habeas corpus be made returnable before a Court in session, all the proceedings had shall be entered of record by the Clerk thereof, as would be done in any other case pending in such Court: and when the application is heard out of the county where the offence was committed, or in the Supreme Court, the Clerk shall transmit a certified copy of all the proceedings upon the application to the Clerk of the District Court of the county where the offence was committed or is triable.

ART. 168. If the return is made and the proceedings had before a Judge of a Court in vacation, he shall cause all the proceedings to be taken down, shall certify to the same, and cause them to be filed with the Clerk of the District Court of the county where the offence was committed or is triable, whose duty it shall be to keep them safely.

ART. 169. The provisions of the two preceding Articles refer only to cases where an applicant is held under accusation for some offence; in all other cases, the proceedings had before the Judge shall be filed and kept by the Clerk of the District Court of the county where the application is heard.

ART. 170. The Court or Judge granting a writ of habeas corpus may grant all necessary orders to bring before him the testimony taken before the examining Court, and may issue all process for enforcing the attendance of witnesses,

which is allowed in any other proceedings in a criminal action.

ART. 171. The word "Return," as used in Articles 144 and 145, refers to and means the report made by the officer or person charged with serving the writ of habeas corpus: and the same word as used in other Articles of this Chapter, means the answer made by the person accused of having another illegally in custody or under restraint, setting forth the cause for which he holds such other person in custody or under restraint.

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§ IV.

General Provisions.

ARTICLE 172. Where a person, before indictment found against him, has been discharged or held to bail on habeas corpus, by order of a Court or Judge of competent jurisdiction, he shall not be again imprisoned or detained in custody on an accusation for the same offence until after he shall have been indicted, unless delivered up by his bail in order to release themselves from their liability.

ART. 173. Where a person once discharged or admitted to bail is afterwards indicted for the same offence for which he has been once indicted, he may be committed upon the indictment, but shall be again entitled to the writ of habeas corpus, and may, notwithstanding the indictment, be admitted to bail, if the facts of the case render it proper: but in cases where, after indictment found, the cause of the defendant has been investigated on habeas corpus and an order made, either remanding him to custody, or admitting him to bail, he shall neither be subject to be again placed in custody, unless when surrendered by his bail, or when the trial of his cause commences before a petit jury, nor shall he be again entitled to the writ of habeas corpus, except in the special cases mentioned in Article 175.

ART. 174. If the accusation against the defendant for a capital offence has been heard on habeas corpus before indict-

ment found, and he shall have been committed after such examination, he shall not be entitled to the writ unless in the special cases mentioned in the next Article.

ART. 175. A party may obtain the writ of habeas corpus a second time, by stating in the application therefor that since the hearing of his first application important testimony has been obtained, which it was not in his power to produce at the former hearing. He shall also set forth the testimony so newly discovered, and if it be that of a witness, the affidavit of the witness shall also accompany such second application.

ART. 176. The preceding Article shall not apply where there has been an appeal to the Supreme Court from the decision of a District Court or Judge upon the first application.

ART. 177. Any officer to whom a writ of habeas corpus or other writ, warrant or process, authorized by this Chapter, shall be directed, delivered or tendered, who shall refuse to execute the same according to its directions, or who shall wantonly delay the service or execution of the same, is guilty of an offence, and shall be punished according to the provisions of the Penal Code: he shall also be liable to fine as for contempt of Court.

ART. 178. Any one having another in his custody, or under his power, control or restraint, who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of another, removes him, or in any other manner attempts to evade the operation of the writ, is guilty of a penal offence, and shall be punished as provided in the Penal Code.

ART. 179. Any Jailor, Sheriff, or other officer, who has a prisoner in his custody, and refuses upon demand to furnish a copy of the process under which he holds the person, is guilty of an offence.

ART. 180. No person shall be discharged under the writ of habeas corpus, who is in custody by virtue of a commitment for any offence exclusively cognizable by the Courts of the United States, or by order or process issuing out of such

Courts in cases where they have jurisdiction, or who is held by virtue of any *legal* engagement or enlistment in the army, or who being *rightfully* subject to the rules and articles of war is confined by any one *legally* acting under the authority thereof, or who is held as a prisoner of war under the authority of the United States.

ART. 181. This Chapter applies to all cases of habeas corpus for the enlargement of persons illegally held in custody, or in any manner restrained of their personal liberty; for the admission of prisoners to bail; and for the discharge of prisoners before indictment, upon a hearing of the testimony. Instead of the writ of habeas corpus in other cases where heretofore used, a simple order shall be substituted.

PART III.

OF PROCEEDINGS IN CRIMINAL ACTIONS, PROSECUTED BY INDICTMENT OR INFORMATION IN THE DISTRICT COURTS.

TITLE I.

THE TIME AND PLACE OF COMMENCING AND PROSECUTING CRIMINAL ACTIONS.

CHAPTER I.

The time within which Criminal Actions may be commenced.

ARTICLE 182. An indictment for murder or forgery may be presented within ten years from the time of the commission of the offence, and not afterwards.

ART. 183. An indictment for theft punishable as a felony, arson, burglary, robbery and counterfeiting, may be presented within five years, and not afterwards.

ART. 184. An indictment for the offence of rape may be presented within one year, and not afterwards.

ART. 185. An indictment for all other felonies may be presented within three years from the commission of the offence, and not afterwards.

ART. 186. For all misdemeanors an indictment or information may be presented within two years from the commission

of the offence, and not afterwards; except misdemeanors which Justices' Courts have concurrent jurisdiction to try, in which cases the indictment may be presented within one year, and not afterwards.

ART. 187. The time during which a person accused of an offence is absent from the State shall not be computed in the period of limitation.

ART. 188. An indictment is to be considered as "presented" when it has been duly acted upon by the grand jury and received by the Court.

ART. 189. An information is to be considered as presented when it has been filed by the proper officer in the proper court.

CHAPTER II.

OF THE COUNTY WITHIN WHICH OFFENCES MAY BE PROSECUTED.

ARTICLE 190. Prosecutions for offences committed wholly or in part without, and made punishable by law within this State, may be commenced and carried on in any county in which the offender is found.

ART. 191. An offence committed on the boundary of any two counties, or within four hundred yards thereof, may be prosecuted and punished in either county, and the indictment or information may allege the offence to have been committed in the county where it is prosecuted.

ART. 192. If any person, being at the time within this State, shall inflict upon another, also within the State, an injury of which such person afterwards dies without the limits of this State, the person so offending shall be liable to prosecution in the county where the injury was inflicted.

ART. 193. If a person, being at the time within this State, shall inflict upon another out of this State, an injury by reason of which the injured person dies without the limits of this State, he may be prosecuted in the county where he was when the injury wrs inflicted.

ART. 194. If a person being at the time without the limits of this State, shall inflict upon another who is at the time within this State, an injury causing death, he may be prosecuted in the county where the person injured dies.

ART. 195. If an offence be committed upon any river or stream, the boundary of this State, it may be prosecuted in the county the boundary of which is upon such stream or river, and the county seat of which is nearest the place where the offence was committed.

ART. 196. If a person receive an injury in one county and die in another by reason of such injury, the offender may be prosecuted in the county where the injury was received or where the death occurred.

ART. 197. Where a river or other stream or highway is the boundary between two counties, any offence committed on such river, stream or highway, at a place where it is such boundary, is punishable in either county, and it may be alleged in the information or indictment that the offence was committed in the county where it is prosecuted.

ART. 198. Where property is stolen in one county and carried off by the offender to another, he may be prosecuted either in the county where he took the property or in any county where he may be found with it.

ART. 199. A citizen of this State who fights a duel with deadly weapons out of this State, or who sends or accepts a challenge to fight a duel with deadly weapons out of this State, or who acts as second, or knowingly aids and assists any other person engaged in a duel, may be prosecuted in any county of this State where he may be found.

ART. 200. Offences committed out of this State by a commissioner of deeds, or other officer acting under the authority of this State, may be prosecuted in any county of this State.

ART. 201. Where an offence is committed on board a vessel which is at the time upon any navigable water within the boundaries of this State, the jurisdiction for the prosecution of the offence is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage commences or terminates.

ART. 202. The offence of bringing into this State a slave that has been convicted in another State of an offence which is capital by the laws of this State, may be prosecuted in any county where the offender may be found, or into which he may have brought such slave.

ART. 203. The offence of embezzlement may be prosecuted in any county in which the offender may have taken or received the property, or through or into which he may have undertaken to transport it.

ART. 204. The jurisdiction for the prosecution of the following offences:

1. Forcible seizure and imprisonment.
2. Kidnapping.
3. Enticing away an unmarried female under the age of twenty-one years, for the purpose of prostitution, belongs either to the county in which the offence was committed, or to any county through, into or out of which the person kidnapped or enticed away may have been carried.

ART. 205. When an act has been committed out of this State by an inhabitant thereof, and such act is an offence by the laws of this State, and is also an offence by the laws of the place where the same was done, a conviction or acquittal of the offender, under the laws of the place where the offence was committed, is a bar to the prosecution in this State. Where the escape of a prisoner occurs, the Sheriff or other person having lawful custody of him may be prosecuted therefor, either in the county where the escape has or may occur, or in the county where the prisoner was under prosecution or trial for the offence.

ART. 206. Where different counties have jurisdiction of the same offence, a conviction or acquittal of the offence in one county is a bar to any further prosecution in any other county.

ART. 207. In all the cases mentioned in the foregoing Articles of this Title, the indictment or information, or any proceeding in the case, may allege that the offence was committed in the county where the prosecution is carried on.

ART. 208. In all cases except those enumerated in previous Articles of this Chapter, the proper county for the prosecution of offences is that in which the offence was committed.

TITLE II.

OF ARREST, COMMITMENT AND BAIL.

CHAPTER I.

OF ARREST WITHOUT WARRANT.

ARTICLE 209. A peace officer, or any other person, may, without warrant, arrest an offender, when the offence is committed in his presence or within his view, if the offence is one classed as a felony or as an "offence against the public peace."

ART. 210. A peace officer may arrest without warrant when a felony or breach of the peace has been committed in the presence or within the view of a Magistrate, and such Magistrate shall verbally order the arrest of the offender.

ART. 211. The municipal authorities of towns and cities may establish rules authorizing the arrest without warrant, of persons found in suspicious places and under circumstances

which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offence against the laws.

ART. 212. Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed and that the offender is about to escape, so that there is no time to procure a warrant, such peace officer may, without warrant, pursue and arrest the person accused.

ART. 213. In all the cases enumerated where arrests may be lawfully made without warrant, the officer or other person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant, as provided in this Code.

ART. 214. In all the cases enumerated in this Chapter, the person making the arrest shall immediately take the person arrested before the Magistrate who may have ordered the arrest, or before the nearest Magistrate where the arrest was made, without an order.

CHAPTER II.

OF ARREST UNDER WARRANT.

ARTICLE 215. A warrant of arrest is a written order directed to a peace officer, or some other person specially named, commanding him to take the body of the person accused of an offence, to be dealt with according to law.

ART. 216. It issues in the name of "The State of Texas," and shall be deemed sufficient, without regard to form, if it have these substantial requisites:

1. It must specify the name of the person whose arrest is

ordered, if it be known; if not known, then some reasonably definite description must be given of him.

2. It must state that the person is accused of some offence against the laws of the State, naming the offence.

3. It must be signed by the Magistrate, and his office be named in the body of the warrant, or in connection with his signature.

4. It may be directed to "any peace officer," or private person, by name.

ART. 217. Magistrates may issue warrants of arrest in all cases in which they are, by law, authorized to order verbally the arrest of offenders.

ART. 218. Magistrates may issue warrants of arrest, also, in the following cases:

1. When any person shall make oath before such Magistrate that another has committed some offence against the laws of the State.

2. In other cases named in this Code where they are specially authorized to issue such warrants.

ART. 219. The affidavit made before the Magistrate, which charges the commission of an offence, is called a *complaint*.

ART. 220. The complaint shall be reduced to writing, and signed by the person making it, if he is able to write his name, otherwise he may place his mark at the foot of the complaint.

ART. 221. A warrant of arrest issued by a Judge of the Supreme or District Court shall extend to every part of the State.

ART. 222. A warrant of arrest may be directed to "any peace officer," but when issued by a Magistrate other than a Supreme or District Judge, if the offender escape from the county where the offence was committed, the warrant may be made effectual in any county of the State by procuring the endorsement of the same by a Magistrate of such county. The endorsement may be in these words, "Let this warrant be executed in the county of ———," signed by the Magistrate, with the name of his office. Any other words expressing the

same meaning will be sufficient. A District or Supreme Judge may, by endorsement of a warrant, authorize it to be executed in any part of the State.

ART. 223. In cases where it is made known by satisfactory proof to the Magistrate, that a peace officer cannot be procured to execute a warrant of arrest, or that so much delay will be occasioned in procuring the services of a peace officer that a person accused will probably escape, the warrant of arrest may be directed to any suitable person who is willing to execute the same, and in such case his name shall be set forth in the warrant.

ART. 224. No person other than a peace officer can be compelled to execute a warrant of arrest, but if any person shall undertake the execution of the warrant he shall be bound to do so under all the penalties to which a peace officer would be liable. He has the same rights and is governed by the same rules as are prescribed to peace officers.

ART. 225. The officer or person executing a warrant of arrest, shall take the person whom he is directed to arrest, forthwith, before the Magistrate who issued the warrant, unless he is directed in the warrant to take such person before some other Magistrate.

ART. 226. If any person be arrested in one county for felony committed in another, he shall in all cases be taken before some Magistrate of the county where it is alleged the offence was committed; but if the arrest be for a misdemeanor, he shall be taken before a Magistrate of the county where the arrest takes place, who shall be authorised to take bail, and whose duty it shall be to transmit immediately the bond so taken to the Clerk of the District Court of the county in which the offence was committed.

ART. 227. A person is said to be arrested when he has been actually placed under restraint, or taken into custody by the officer or person executing the warrant of arrest.

ART. 228. An arrest may be made on any day or at any time of the day or night.

ART. 229. In making an arrest all reasonable means are

permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused.

ART. 230. In cases of felony the officer may break down the door of any house for the purpose of effecting an arrest, if he be refused admittance after giving notice of his authority and purpose.

ART. 231. In executing a warrant of arrest it shall always be made known to the person accused, under what authority the arrest is made, and, if requested, the warrant shall be exhibited.

ART. 232. If a person arrested shall escape or be rescued, he may be re-taken without any other warrant; and for the purpose of re-taking the person so escaping or rescued, all the means may be used which are authorized in making the arrest in the first instance.

CHAPTER III.

OF THE COMMITMENT OR DISCHARGE OF THE ACCUSED.

ARTICLE 233. When a person accused of an offence has been brought before a Magistrate, that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure the aid of counsel.

ART. 234. The Magistrate may, at the request of the prosecutor or person representing the State, or of the defendant, postpone, for a reasonable time, the examination, so as to afford an opportunity to procure testimony; but the accused shall in the meanwhile be detained in the custody of the Sheriff or other duly authorized officer.

ART. 235. Before the accused has made any voluntary statement, the witnesses, both for and against him, shall be sworn and examined. But the Magistrate shall, if requested by the accused or his counsel, or by the person prosecuting, have all the witnesses placed in charge of an officer, except the witness who is testifying, so that the testimony given by any one witness shall not be heard by any of the others.

ART. 236. If any person appear to prosecute as counsel for the State, he shall have the right to put the questions to the witnesses on the direct or cross-examination, and the accused or his counsel has the same right.

ART. 237. Should no counsel appear either for the State or for the defendant, the Magistrate may examine the witnesses, and the accused has the same right; but in all cases of felony. where the District Attorney is in the county where the prosecution is being conducted, he shall be notified by the Magistrate, and it is his duty to be present and represent the State.

ART. 238. The testimony of all the witnesses shall be reduced to writing, signed by them with their names or marks; and all the testimony thus taken shall be certified to by the Magistrate.

ART. 239. After examining the witnesses in attendance, if it satisfactorily appear to the Magistrate that there is other important testimony which may be had by a postponement of the examination, he shall, at the request of the prosecutor or of the defendant, postpone the further examination for a reasonable time, to enable such testimony to be procured; but in such case the accused shall remain in the custody of the proper officer until the day fixed for such further examination. No postponement shall take place unless a statement on oath be made by the defendant or the person prosecuting, setting forth the name and residence of the witness, and the facts which it is expected will be proved; or if it be testimony other than that of a witness, the statement made shall set forth the nature of the evidence.

ART. 240. The examination of the witnesses shall be in the presence of the accused.

ART. 241. After the examination of the witnesses has been concluded, the Magistrate shall inform the defendant that it is his right to make a statement relative to the accusation brought against him, but shall, at the same time, also inform him that he cannot be compelled to make any statement whatever.

ART. 242. If the accused shall desire to make a voluntary statement, the same shall be reduced to writing by the Magistrate or some one under his direction, and shall be signed by the accused. Where the accused prefers to write out altogether his statement, he is at liberty to do so, and of this he shall be informed by the Magistrate; should the accused be unable to write, he may affix his mark to the statement.

ART. 243. The Magistrate shall in every case attest, by his own certificate and signature, the execution and signing of the statement.

ART. 244. The Magistrate has the power to issue an attachment for the purpose of enforcing the attendance of a witness; and this he may do without having previously issued a subpœna for that purpose.

ART. 245. The officer to whom the attachment is issued shall execute it forthwith, by bringing before the Magistrate the witness named.

ART. 246. Witnesses may be brought by attachment before the examining Magistrate, from any county, in case of felony, and it shall not be necessary to tender the expenses of such witnesses, but no attachment shall issue to a county other than that where the prosecution is being conducted, unless oath be made by the party applying for the process that the presence of the witness is material and his testimony important for the prosecution or defence, as the case may be; and the affidavit shall further set forth the facts which it is expected will be proved by the witness. An examination may be postponed a reasonable time for the purpose of bringing in a witness.

ART. 247. Any person accused of an offence, whether capital or of less grade, shall be discharged if it do not appear that an offence has been committed, or that there is probable

cause to believe the defendant guilty thereof, under the restrictions, however, prescribed in the succeeding Article.

ART. 248. Upon examination of a person accused of a capital offence, no Magistrate, other than a Judge of the Supreme or District Court, or Chief Justice of a county, shall have power to discharge the defendant. Any Magistrate may admit to bail, unless in capital cases where the proof is evident or the presumption great.

ART. 249. Where it is made to appear by complaint on oath to a Judge of the Supreme or District Court, or Chief Justice of a county, that the bail taken in any case is insufficient in amount, such Judge or Chief Justice shall issue a warrant of arrest, and require of the defendant additional security, according to the nature of the case.

ART. 250. After the examination of the witnesses has been fully completed, and the voluntary statement of the accused, if any, taken, the Magistrate shall proceed to make an order committing the defendant to the jail of the proper county, if there be one, discharging him, or admitting him to bail, as the law and facts of the case may require.

ART. 251. Where there is no safe jail in the county in which the prosecution is carried on, the Magistrate may commit to the nearest safe jail of any other county.

ART. 252. The warrant of commitment in the case mentioned in the preceding Article shall be directed to the Sheriff of the county to which the defendant is sent, but the Sheriff of the county from which the defendant is taken, shall be required to deliver the prisoner into the hands of the Sheriff of the county to which he is sent.

ART. 253. A warrant of commitment is an order, signed by the proper Magistrate, directing a Sheriff to receive and place in jail the person so committed. It will be sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas."

2. That it be addressed to the Sheriff of the county, to the jail of which the defendant is committed.

3. That it state, in plain language, the offence for which the defendant is committed, and give his name, if it be known, or if unknown, contain an accurate description of the defendant.

4. That it state to what Court, and at what time, the defendant is to be held to answer.

5. When the prisoner is sent out of the county where the prosecution arose, the warrant shall state that there is no safe jail in the proper county.

ART. 254. In every case where, for want of a safe jail in the proper county, a prisoner is committed to the jail of another county, the last named county shall have the right to recover, by civil action, in a Court of competent jurisdiction, of the county from which the prisoner was sent, an amount of money not exceeding seventy-five cents per day, on account of the expenses attending the custody and safe keeping of a prisoner.

ART. 255. It is the duty of every Sheriff to keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end, but shall adopt all necessary measures to prevent the escape of a prisoner. He may summon a guard of sufficient number, in case it become necessary, to prevent an escape from jail or the rescue of a prisoner.

ART. 256. A discharge by a Magistrate upon an examination of any person accused of an offence shall not prevent a second arrest of the same person for the same offence.

CHAPTER IV.

OF BAIL.

§ I.

General Rules Applicable to all Cases of Bail.

ARTICLE 257. Bail is the security given by a person accused of an offence that he will appear and answer before the proper Court, the accusation brought against him.

ART. 258. This security is given by means of a recognizance, or a bail bond.

ART. 259. A recognizance is an undertaking entered into before the Supreme or District Court by the defendant to a criminal action and his sureties, by which they bind themselves respectively, in a sum fixed by the Court, that the defendant will appear for trial before the proper Court upon the accusation preferred against him. The undertaking of the parties, in such case, is not signed, but made a matter of record in the Court where the same is entered into.

ART. 260. A bail bond is an undertaking entered into by the defendant and his sureties for the same purpose as a recognizance; it is written out, and signed by the defendant and his sureties.

ART. 261. A bail bond is entered into, either before a Magistrate, upon an examination of a criminal accusation against a defendant, as provided in Chapter III of this Title, or before a Judge, upon an application under habeas corpus; or it is taken from the defendant by a peace officer who has a warrant of arrest or of commitment, as hereafter provided.

ART. 262. Wherever the word bail is used with reference to the security given by the defendant, it is intended to apply as well to recognizances as to bail bonds.

When a defendant is said to be "on bail," or to have "given

bail," it is intended to apply as well to recognizances as to bail bonds.

ART. 263. A recognizance shall be sufficient to bind the principal and sureties, if it contain the following requisites.

1. That it be acknowledged that the defendant is indebted to the State of Texas in such sum as is fixed by the Court, and that the sureties are in like manner indebted in such sum as is fixed by the Court.

2. That it state, distinctly, the accusation against the defendant.

3. That it appear by the recognizance that the defendant is accused of an offence against the laws of this State.

4. That the time and place, when and where the defendant is bound to appear, be stated, and the Court before which he is bound to appear.

ART. 264. A bail bond shall be sufficient, if it contain the following requisites:

1. That it be made payable to the State of Texas.

2. That the obligors thereto bind themselves that the defendant will appear before the proper Court to answer the accusation against him.

3. That the offence of which the defendant is accused be distinctly stated in the bond, and that it appear therefrom that he is accused of some offence against the laws of the State.

4. That the bond be signed by the principal and sureties, or in case all or either of them cannot write, then that they affix thereto their marks.

5. That the bond state the time and place, when and where the accused binds himself to appear, and the Court before which he is to appear. In stating the time, it is sufficient to specify the term of the Court; and in stating the place, it is sufficient to specify the name of the Court and of the county.

ART. 265. The rules laid down in this Chapter respecting recognizances and bail bonds are applicable to all such undertakings when entered into in the course of a criminal action, whether before or after indictment or information, in every case where authority is given to any Court, Judge, Magistrate, or other officer, to require bail of a person accused of an offence, or of a witness in a criminal action.

ART. 266. The manner of recovering, in behalf of the State, the amount of such recognizances and bonds, is laid down in Part III, of this code, Title IV, Chapter IV.

ART. 267. A recognizance or bail bond, entered into by a defendant, and which binds him to appear at a particular term of the District Court, shall be construed to bind him and his sureties, for his attendance upon the Court from term to term, and from day to day, until his final acquittal or conviction and sentence.

ART. 268. A minor or married woman, cannot be surety on a recognizance or bail bond, but if either of these classes of persons be the accused party, the undertaking shall be binding both upon principal and surety.

ART. 269. It is the duty of every Court, Judge, Magistrate, or other officer, taking bail, to require evidence of the sufficiency of the security offered; but in every case one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution, and of debts or other incumbrances; that he is a resident of this State, and has property therein liable to execution, worth the sum for which he is bound.

ART. 270. The property secured by the Constitution and laws from forced sale, shall not in any case be held liable for the satisfaction of a recognizance or bail bond, either as to the principal or sureties.

ART. 271. In order to test the sufficiency of the security offered to any recognizance or bail bond, unless the Court or officer taking the same is fully satisfied as to the sufficiency of the security, the following oath shall be made in writing, and subscribed by the surety "I, A. B. do swear (or affirm as the case may be) that I am worth in my own right, at least the sum of [here insert the amount in which the surety is bound] after deducting from my property all that which is exempt by the Constitution and Laws of the State, from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances upon my property which are known to me; that I reside in ——— county, and have property in this State liable

to execution, worth [amount for which he offers to be bound] or more.

Dated —— and attested by the Judge of the Court, Clerk, Magistrate, or Sheriff, } [Signed by the surety]

which affidavit shall be filed with the papers of the cause, or criminal proceeding.

ART. 272. The amount of bail, to be required in any case, is to be regulated by the Court, Judge, Magistrate, or officer, taking the bail; they are to be governed in the exercise of this discretion by the Constitution of this State, and by the following rules :

1. The bail shall be sufficiently high, to give reasonable assurance that the undertaking will be complied with.

2. The power to require bail is not to be used in such manner as to make it an instrument of oppression.

3. The nature of the offence, and the circumstances under which it was committed, are to be considered.

4. The pecuniary circumstances of the accused are to be regarded, and proof may be taken upon this point.

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§ II.

Surrender of the Principal by his Bail.

ARTICLE 273. Those who have become bail for the accused or either of them, may at any time relieve themselves of their undertaking, by surrendering the accused into the custody of the Sheriff of the county where he is prosecuted.

ART. 274. Should a surrender of the accused be made during a term of the Court to which he has bound himself to appear, the Sheriff shall take him before the Court; and if he is willing to give other bail, the Court shall forthwith require him to enter into recognizance. Any surety desiring to surrender the accused may, upon making a written affidavit of such intention, obtain a warrant for his arrest, which shall be executed as in other cases.

ART. 275. If the surrender be made while the Court is not in session, the Sheriff may himself take the necessary bail bond.

ART. 276. If the accused fail, or refuse to give bail, in case of a surrender, during a term of the Court, the Court shall make an order that he be committed to Jail until the bail be given; and this shall be a sufficient commitment, without any written order or warrant to the Sheriff.

ART. 277. Where the surrender is made at any other time than during the session of the Court, and the defendant refuses to give other bail, the Sheriff shall take him before the nearest Magistrate, and such Magistrate shall issue a warrant of commitment, reciting the fact that the accused has been once admitted to bail, has been surrendered and now refuses to give other bail.

ART. 278. The rules laid down in Chapter three, of this Title, with respect to the sending of an accused person to the Jail of another county, shall also apply to cases where the party has been surrendered by his bail.

ART. 279. The Sheriff, in cases of misdemeanor, has authority, at all times, whether during the term of the Court, or in vacation, where he has a defendant in custody under a warrant of commitment, or where the accused has been surrendered by his bail, to take of the defendant other bail.

ART. 280. In cases of felony, the Sheriff cannot, during the term of the Court, take the bail, but must bring the accused before the Court, that he may there enter into recognizance.

ART. 281. Sureties shall in all cases be severally bound, and when a surrender of the defendant is made by one or more of them, those making the surrender shall be considered discharged, and the others held bound; and in such cases, the defendant shall be required to give other security in place of the persons so discharged.

ART. 282. The recognizance or bail bond, shall be as valid against the sureties still held bound, under the preceding Article, as if no surrender had been made.

ART. 283. The provisions of the two preceding Articles apply to all bonds authorized to be taken for the purpose of preventing the commission of offences, and the preservation of the peace.

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§ III.

Bail before the Examining Court.

ARTICLE 284. The rules laid down in the preceding Articles of this Chapter, relating to the amount of the bail—the number of sureties—the person who may be surety—the property which is exempt from liability—the form of bail bonds—the responsibility of parties to the same—and all other rules in this Chapter of a general nature, are applicable to bail taken before an examining Court.

ART. 285. After a full examination of the testimony, the Magistrate shall, if the case be one where bail may properly be granted and ought to be required, proceed to make an order that the accused execute a bail bond with sufficient security, conditioned for his appearance at the next term of the District Court for the proper county.

ART. 286. All persons, accused of offences, less than capital, are entitled to bail as a matter of right.

ART. 287. In capital cases *where the proof is evident or the presumption great*, bail cannot be allowed.

ART. 288. In making the order, admitting to bail, the Magistrate shall fix the amount of the sum, in which the accused and his sureties shall be respectively bound.

ART. 289. Reasonable time shall be given the accused to procure security.

ART. 290. If, after the allowance of reasonable time, the security be not offered, the Magistrate shall make an order committing the accused to jail, to be there kept safely until

the required bail be given, and he shall issue a warrant of commitment, directed to the Sheriff of the county in which the prosecution is pending, or in cases provided for in Articles 251 and 278 to the Sheriff of some other county, which warrant of commitment shall, however, set forth that the defendant is entitled to be released upon giving bail to the Sheriff in whose custody he may be, in the amount fixed by such Magistrate.

ART. 291. If the party accused be ready to give bail, the Magistrate shall prepare, or cause to be prepared, a bail bond, which shall be signed by the accused and his surety, the Magistrate first enquiring into the sufficiency of the security offered, and requiring one or more sureties according to the wish of the accused or the solvency of the sureties offered.

ART. 292. There is no particular form for a bail bond, but it must contain the substantial requisites prescribed in the preceding part of this Chapter.

ART. 293. The accused is to be set at liberty so soon as he has complied with the order of the Magistrate, by giving the bail required.

ART. 294. Where a defendant is committed for failing to give bail, he shall be discharged by the officer in whose custody he is, upon executing the proper bail bond. The officer to whose charge he is committed having the right, in all such cases, to take the bond.

ART. 295. The Magistrate before whom an examination has taken place, upon a criminal accusation, shall certify to all the proceedings had before him, and transmit them, sealed up, to the Court before which the defendant is subject to be tried upon indictment or information, writing his name across the seals of the envelop containing the proceedings. The voluntary statement of the defendant—the testimony of the witnesses—bail bonds, and all and every other proceeding in the case, shall be thus delivered to the Clerk of the District Court.

ART. 296. It is the duty of a Magistrate, as well where a party has been discharged as where he has been held to bail

or committed, to cause the proceedings before him to be certified and delivered to the District Court; and he shall, likewise, where a complaint has been made to him of the commission of an offence, and there has been a failure from any cause to arrest the accused, file with the proper Clerk the warrant of arrest and complaint.

§ IV.

Bail by Witnesses.

ARTICLE 297. Witnesses on behalf of the State or defendant, may be required by the Magistrate, upon the examination of any criminal accusation before him, to give bail for their appearance to testify before the District Court; and if a witness make oath that he is unable to give security, or deposit a sufficient amount of money in lieu thereof; then his individual bond shall be taken, and shall have the same force and effect against him as a bail bond.

ART. 298. The amount of security, to be required of a witness, is to be regulated by his pecuniary condition, and the nature of the offence with respect to which he is a witness.

ART. 299. Bonds given by witnesses may be forfeited and recovered upon in the manner pointed out in Part III, Title IV, Chapter IV, §II, of this Code.

TITLE III.

OF SEARCH WARRANTS.

CHAPTER I.

GENERAL RULES.

ARTICLE 300. A search warrant is a written order, issued by a Magistrate and directed to a peace officer, commanding him to search for personal property, and to seize the same and bring it before such Magistrate; or it is a like written order, commanding a peace officer to search a suspected place where it is alleged stolen property is commonly concealed, or implements kept for the purpose of being used in the commission of any designated offence.

ART. 301. A search warrant may be issued for the following purposes and no others:

1. To discover property acquired by theft, or in any other manner which makes its acquisition a penal offence.

2. To search suspected places, where it is alleged property so illegally acquired is commonly kept or concealed.

3. To search places, where it is alleged implements are kept for the purpose of being used in forging or counterfeiting.

4. To search places, where it is alleged arms or munitions are kept or prepared for the purpose of insurrection or riot.

5. To seize and bring before a Magistrate any such property, implements, arms or munitions.

ART. 302. A warrant to search for and seize stolen property is designed as a means of obtaining possession of the

property, for the purpose of restoring it to the true owner, and detecting any person guilty of the theft or concealment of the same.

ART. 303. The word "stolen," as used in this Title, is intended to embrace also the acquisition of property by any means forbidden and made penal by the law of the State.

ART. 304. When it is alleged that the property, to search for a which a warrant is asked, was acquired in any other manner than by theft, the particular manner of its acquisition must be set forth in the complaint and in the warrant.

ART. 305. The mode of proceeding, directed to be pursued in applying for a warrant, to search for and seize *stolen* property, and the rules prescribed for officers in issuing such warrants, and executing the same, the disposition of the property seized, and all other rules herein prescribed on the subject, shall apply and be pursued, when the property to be searched for was acquired in any manner in violation of the provisions of the Penal Code.

CHAPTER II.

WHEN AND HOW A SEARCH WARRANT MAY BE ISSUED.

ARTICLE 306. A warrant to search for and seize property alleged to be stolen and concealed at a particular place, may be issued by a Magistrate whenever complaint in writing and on oath is made to such Magistrate, setting forth—

1. The name of the person accused of having stolen or concealed the property, or if his name be unknown, giving a description of the accused; or stating that the person who stole or concealed the property is unknown.

2. The kind of property and its probable value, alleged to be stolen or concealed.

3. The place where the property is alleged to be concealed.

4. The time, as near as may be, when the property is alleged to have been stolen.

ART. 307. A warrant to discover and seize property alleged to have been stolen, or otherwise acquired in violation of the penal law, but not alleged to be concealed at any particular place, may be issued whenever complaint is made in writing and on oath, setting forth—

1. The name of the person suspected of being the thief, or an accurate description of him if his name be unknown, or that the thief is unknown.

2. An accurate description of the property, and its probable value.

3. The time, as near as may be, when the property is supposed to have been stolen.

4. That the person complaining has good ground to believe that the property was stolen by the person alleged to be the thief.

ART. 308. A warrant to search any place suspected to be one where stolen goods are commonly concealed, or where implements are kept, for the purpose of aiding in the commission of offences, may be issued by a Magistrate when complaint is made in writing and on oath, setting forth—

1. A description of the place suspected.

2. A description of the kind of property alleged to be commonly concealed at such place, or the kind of implements kept.

3. The name, if known, of the person supposed to have charge of such place, when it is alleged that it is under the charge of any one.

4. When it is alleged that implements are kept at a place for the purpose of aiding in the commission of offences, the particular offence for which such implements are designed, must be set forth.

ART. 309. The Magistrate, at the time of issuing a search warrant, may also issue a warrant for the arrest of the person accused of having stolen the property, or of having concealed the same, or of having in his possession or charge, property concealed at a suspected place, or of having possession

of implements designed for use in the commission of the offence of forgery or counterfeiting, or of having the charge of arms or munitions prepared for the purpose of insurrection, or of having prepared such arms or munitions, or who may be in any legal manner accused of being accomplice or accessory to any of the offences above enumerated.

ART. 310. The search warrant may, in addition to commanding the peace officer to seize property, also require him to bring before the Magistrate the person accused of having stolen or concealed the property.

ART. 311. A search warrant to seize property stolen and concealed, shall be deemed sufficient if it contain the following requisites:

1. That it run in the name of "The State of Texas."

2. That it be directed to the Sheriff of the proper county.

3. That it describe the property alleged to be stolen or concealed, and the place where it is alleged to be concealed, and order the same to be brought before the Magistrate.

4. That it name the person accused of having stolen or concealed the property, or if his name be unknown, that it describe him with accuracy, and direct the officer to bring such person before the Magistrate, or state that the person who stole or concealed the property is unknown.

5. That it be dated and signed by the Magistrate.

ART. 312. A warrant to search a suspected place shall be deemed sufficient if it contain the following requisites:

1. That it run in the name of "The State of Texas."

2. That it describe with accuracy the place suspected.

3. That it describe, as near as may be, the property supposed to be commonly concealed in such suspected place, or the implements alleged to be there kept for the purpose of aiding in the commission of offences, and state the particular offence for which such implements are designed.

4. That it name the person accused of having charge of the suspected place, if there be any such person, or if his name is unknown, that it describe him with accuracy and direct him to be brought before the Magistrate.

5. That it be dated and signed by the Magistrate, and directed to the Sheriff of the proper county.

CHAPTER III.

OF THE EXECUTION OF A SEARCH WARRANT.

ARTICLE 313. Any Sheriff to whom a search warrant is delivered, shall execute the same without delay; but a search warrant shall not be executed, except in the day time, nor by any other person than a Sheriff or his lawful Deputy.

ART. 314. In the execution of a search warrant, the officer may call in aid any number of citizens in his county, who shall be bound to aid in the execution of the same.

ART. 315. The officer shall, upon going to the place ordered to be searched, or before seizing any property for which he is ordered to make search, give notice of his purpose to the person who has charge of, or is an inmate of the place, or who has possession of the property described in the warrant.

ART. 316. If an officer, in the execution of a search warrant, is resisted, he may use such force as is necessary to overcome the resistance, but no greater.

ART. 317. In the execution of a search warrant, the officer may break down a door or window of any house which he is ordered to search, if he cannot effect an entrance by other less violent means; but when the warrant issues only for the purpose of discovering property stolen or otherwise obtained in violation of the Penal Law, without designating any particular place where it is supposed to be concealed, no such authority is given to the officer executing the same.

ART. 318. When the property, implements, arms or munitions, which the officer is directed to search for and seize, are found, he shall take possession of the same and carry them before the Magistrate. He shall also arrest any person whom he is directed to arrest by the warrant, and forthwith take such person before the Magistrate.

ART. 319. A search warrant must be executed within three days from the time of its issuance, and forthwith returned to the proper Magistrate; but the Magistrate may,

in the warrant, direct that the same may be executed within a shorter period.

ART. 320. An officer taking any property, implements, arms or munitions, shall receipt therefor to the person from whose possession the same may have been taken.

ART. 321. Upon returning the search warrant, the officer shall state on the back of the same or on some paper attached to it, the manner in which it has been executed, and shall likewise deliver to the Magistrate an inventory of the property, implements, arms or munitions, taken in his possession under the warrant.

CHAPTER IV.

PROCEEDINGS ON THE RETURN OF A SEARCH WARRANT.

ARTICLE 322. When property is taken under a search warrant and delivered to a Magistrate, he shall, if it appear that the same was stolen or otherwise acquired in violation of the Penal Law, dispose of it according to the rules prescribed in Part III, Title VIII, Chapter III, of this Code.

ART. 323. When a warrant has been issued for the purpose of searching a suspected place, and there be found any such implements, arms or munitions, as are alleged to have been there kept or concealed, the same shall be safely kept by the Sheriff, subject to the order of the District Court of the proper county.

ART. 324. The Sheriff shall, in every case arising under the preceding Article, furnish the Magistrate who issued the warrant, with a certified schedule of the articles in his possession.

ART. 325. Arms or munitions, taken under a warrant in accordance with the provisions of this Title, shall become forfeited to the State, and shall be so adjudged by the District Court, upon the conviction or escape of any person accused of having had possession of, or of having concealed them.

ART. 326. Implements intended to be used for forging or counterfeiting, shall, upon the conviction or escape of the person accused of having had or concealed them, be destroyed by the Sheriff under the order of the Court.

ART. 327. When implements, supposed to be designed for forging or counterfeiting, are in the hands of the Sheriff, and the person accused of having had possession of, or of having concealed such implements, has been discharged by the Magistrate, the District Attorney shall cause the fact to be made known to the Court, who, (if satisfied upon investigation that they were designed for such purpose) shall cause them to be destroyed by the Sheriff, in the same manner as if the accused person had been convicted or had escaped.

ART. 328. When it appears upon investigation, that the implements seized were not such as might be or are commonly used for forging or counterfeiting, they shall be delivered to the person from whom they were taken.

ART. 329. The investigation spoken of in the preceding Articles, may be made by the District Judge, by hearing proof before a jury.

ART. 330. The Magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony, as on other examinations before him, and be governed by like rules.

ART. 331. If the Magistrate be satisfied there was good ground for issuing the warrant, he shall require the person arrested to give bail, as in other cases, to answer the accusation against him before the proper Court.

ART. 332. If the Magistrate be not satisfied that there was good ground for the issuance of the warrant, he may

discharge the defendant and order restitution of the property or articles taken from him, except implements which appear to be designed for forging or counterfeiting; and in such cases the implements shall be kept by the Sheriff, subject to the order of the proper Court. It shall be the duty of the Sheriff to report to the District Attorney all cases in which such implements are in his possession, and the accused person discharged.

ART. 333. Bail bonds taken in such cases shall have the same substantial requisites which are prescribed for other bail bonds taken before the Magistrates, and may be recovered upon in the same manner.

ART. 334. The Magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall file with the Clerk of the District Court, before the next term of said Court, all the original papers relating thereto.

TITLE IV.

OF THE PROCEEDINGS SUBSEQUENT TO COMMITMENT OR BAIL AND PRIOR TO THE TRIAL.

CHAPTER I.

THE ORGANIZATION OF THE GRAND JURY.

ARTICLE 335. The County Court, consisting of the Chief Justice and County Commissioners, or a quorum of that body, shall meet on the first Monday of January and the first Monday in July of each year, for the purpose of selecting the Grand Jurors, to serve at the next succeeding term of the District Court, in each county of the State.

ART. 336. A quorum, for the purposes specified in the preceding Article, shall consist of any three of the Commissioners, or of the Chief Justice and any two Commissioners.

ART. 337. In case a quorum of the Court be not in attendance at the time fixed in Article 335, any one or more of the members of the Court who may be present, may adjourn from day to day for one week, until the attendance of a quorum be had, and in case of a failure to hold a Court during said week, the Chief Justice of the county or (in case of his absence, or failure to discharge the duty then,) any two of the County Commissioners may call a meeting of the Court at as early a day as practicable after the first Monday of January and July, for the purpose of selecting the Grand Jury, for the next succeeding term of the District Court.

ART. 338. The Court, when assembled at a regular or called term as above provided, shall proceed to select a number of persons, not less than fifteen, nor more than twenty, to serve as Grand Jurors.

ART. 339. The Court shall take care to select persons having the following qualifications; they shall be

1. Citizens of the State and county in which they are to serve, qualified to vote under the Constitution and Laws.

2. Freeholders within the State, or householders within their respective counties.

ART. 340. The proceedings of the County Court, in selecting the Grand Jurors, shall be entered of record upon the minutes of said Court, which entry shall particularly state the names of the persons selected.

ART. 341. It is the duty of the County Court to see that the persons so selected be men of good moral character and intelligence; and they shall be distributed, as to residence, as nearly as may be through the different parts of the county.

ART. 342. At each term of the County Court, when a Grand Jury is selected as herein provided, the names of the persons so selected shall be placed on a list to be kept in the office of the Clerk of said Court, in order that the same persons may not be compelled to serve at any two successive terms of the District Court.

ART. 343. The County Court shall, as far as practicable, so regulate the Grand Jury service in each county, (taking into consideration the amount of population,) as that such service may be equally divided among the citizens of the county, qualified to discharge the duty.

ART. 344. The Clerk of the County Court shall furnish to the Clerk of the District Court a certified list of the persons selected as Grand Jurors, within ten days after they have been selected.

ART. 345. The Clerk of the District Court shall issue a writ to the Sheriff of the county, directing him to summon the persons whose names have been furnished him as Grand Jurors, to attend at the proper term of the Court.

ART. 346. The Sheriff shall give notice to each person whom he is directed to summon, at least ten days before the meeting of the District Court. This notice may be given

verbally in person to each Juror, or by leaving a written, notice at the house of such person, with some free white person over the age of fourteen years, who is an inmate of such house; and if any person so notified shall fail to attend as a Juror, he may be fined by the Court not exceeding the sum of fifty dollars.

ART. 347. If, for any cause, there should be a failure to select and summon a Grand Jury as herein directed, or when none of those summond shall attend, the District Court shall on the first day of the organization thereof, direct a writ to be issued to the Sheriff, commanding him to summon any number of persons not exceeding twenty, to serve as Grand Jurors.

ART. 348. If as many as fifteen persons shall be in attendance on the District Court, who have been selected by the County Court in accordance with the provisions of this Chapter, the Court shall proceed to impannel a Grand Jury.

ART. 349. Each person who is presented to serve as a Grand Juror, shall, before being impannelled, be interrogated on oath by the District Judge, or under his direction, touching his qualifications.

ART. 350. In trying the qualifications of any person to serve on the Grand Jury, he shall be asked these questions,

1. Are you a citizen of this State and county, and a qualified voter at elections for Members of the Legislature?

2. Are you a freeholder in this State, or a householder in this county?

ART. 351. If, by the answer of the person interrogated, it appears that he is a citizen of the State and county, where the Court is held, is qualified by the Constitution and Laws to vote at elections for Members of the Legislature, and is either a freeholder in the State, or a householder in the proper county, he shall be deemed a competent Grand Juror.

ART. 352. Any person summoned, who does not possess the requisite qualifications, shall be excused by the Court from serving.

ART. 353. If it be found that there are as many as fifteen of those summoned to attend as Grand Jurors who are present and possess the proper qualifications, they shall be impanelled as the Grand Jury, unless the array or some particular member be challenged, as hereinafter provided, and by reason of such challenge the whole body of Grand Jurors is set aside, or a sufficient number to reduce it below the number of fifteen.

ART. 354. When a number less than fifteen are found to be in attendance, of persons qualified to serve as Grand Jurors, the Court shall require such additional number to be summoned as may be deemed necessary, so that a legal Grand Jury may be organized, of at least fifteen persons.

ART. 355. When, by challenges to particular individuals of those summoned, less than fifteen persons remain, or when from any cause whatever it is found that less than that number are present, the Court shall direct the Grand Jury to be completed as provided in the preceding Article.

ART. 356. When the Grand Jury is completed, one of their body shall be appointed foreman, and the following oath shall be administered to each of said Jurors:

"You solemnly swear (or affirm as the case may be,) that you will keep secret the proceedings and deliberations of the Grand Jury, that you will diligently enquire into, and true presentment make of all offences against the Penal Laws, committed within your jurisdiction, of which you may have knowledge or receive information, so help you God."

ART. 357. After the Grand Jury has been sworn; the Court shall give them instruction as to their duty.

ART. 358. One or more bailiffs may be sworn to attend upon the Grand Jury. The oath taken by a bailiff shall be to keep secret the proceedings of the Grand Jury.

ART. 359. A bailiff is to obey the instructions of the foreman, to summon all witnesses, and generally to perform all such duties as are required of him by the foreman; where two bailiffs are appointed, one of them shall be always with the Grand Jury.

ART. 360. A Grand Juror is said to be *impannelled*, after

his qualifications have been tried, and he has been sworn. By the word *panel* is meant the whole body of Grand Jurors.

ART. 361. In case of the absence of the foreman of the Grand Jury, from sickness or other cause, the Court may appoint in his place some other member of the body.

ART. 362. Any person, before the Grand Jury have been impannelled, may challenge the array of Jurors, or any person presented as a Grand Juror.

ART. 363. A challenge to the array may be made for these causes only:

1. That the list of persons summoned by the Sheriff was not in fact selected by the County Court.

2. In case of a Grand Jury summoned by order of the District Court, where there has been a failure to act by the County Court, or a failure to attend on the part of the person summoned, that the Sheriff has acted corruptly in summoning any one or more of the Jurors.

ART. 364. A challenge to a particular Grand Juror may be for the following causes:

1. That he is under twenty-one years of age.

2. That he is not a citizen of the State, and a qualified voter under the laws.

3. That he is not a freeholder of the State, or a householder of the county.

4. That since the last term of the Court he has been prosecuted, and is under accusation, for some offence, indictable in the county where he is about to be placed on the Grand Jury.

5. That he is the prosecutor, upon an accusation against the person making the challenge.

6. That he is related by consanguinity or affinity to some person who has been held to bail, or who is in confinement upon a criminal accusation.

ART. 365. When a challenge to the array or to any individual has been made, the Court shall hear proof and decide in a summary manner whether the challenge be well founded or not.

ART. 366. If the challenge to the array be sustained, the Court shall, as in Article 347, direct another Grand Jury to be summoned.

ART. 367. If by challenge to any particular individual, the number of Grand Jurors be reduced below fifteen, the panel shall be completed by summoning others under the orders of the Court, as provided in Articles 354 and 355.

ART. 368. By the array of Grand Jurors is meant the whole body of persons summoned to serve as such, before they have been impannelled.

ART. 369. The proper time for a challenge to the array is before the Jurors have been interrogated as to their qualifications. A challenge to any particular individual is to be made after the qualifications of the Grand Jurors have been tested by their own oaths.

ART. 370. Twelve members shall be a quorum for the purpose of discharging any duty or exercising any right properly belonging to the Grand Jury.

CHAPTER II.

OF THE DUTIES, PRIVILEGES AND POWERS OF THE GRAND JURY.

ARTICLE 371. The Grand Jury, after being organized, shall proceed to the discharge of their duties, and some suitable place shall be prepared by the Sheriff, for their sessions.

ART. 372. The deliberations of the Grand Jury shall be secret, and any member of the body or bailiff who divulges anything transpiring before them, in the course of their official duties, shall be liable to a fine, as for contempt of the court, not exceeding one hundred dollars, and to imprisonment, not exceeding five days.

ART. 373. The District Attorney may go before the Grand Jury at any time, except when they are discussing the propriety of finding a bill of indictment, or voting upon the same.

ART. 374. When any question arises before a Grand Jury, respecting the proper discharge of their duties, or any matter of law, about which they may require advice, it is their right to send for the District Attorney, and take his advice thereon.

ART. 375. The District Attorney may examine the witnesses before the Grand Jury, and may advise as to the proper mode of interrogating them, if desired, or if he thinks it necessary.

ART. 376. The Grand Jury may also seek and receive advice from the Court, touching any matter before them, and for this purpose shall go into Court in a body; but they shall so guard the manner of propounding their questions, as not to divulge the particular accusation that is pending before them; or they may propound their questions in writing, upon which the Court may give them the desired information in writing.

ART. 377. The Grand Jury shall meet and adjourn at times agreed upon by a majority of the body, but they shall not adjourn at any one time for more than three days, and shall, as near as may be, conform their adjournments to those of the Court.

ART. 378. It is the duty of the Grand Jury to enquire into all offences liable to indictment, of which any of the members may have knowledge, or of which they shall be informed by the District Attorney or any other credible person.

ART. 379. The foreman of the Grand Jury may issue a summons for any witness in the county where they are sitting, which summons need only require the witness to appear before them at a time fixed or forthwith, without stating the matter in respect to which the witness will be called upon to testify.

ART. 380. If a person, notified by written summons, to

appear before the Grand Jury as a witness, refuses or fails to obey the summons, the bailiff shall make return of that fact upon the summons, and file the same with the Clerk of the District Court, who shall, thereupon, issue an attachment, which shall authorize the bailiff or Sheriff to arrest the witness and take him before the Grand Jury.

ART. 381. When a witness, brought in any manner before a Grand Jury, refuses to testify, such fact shall be made known to the District Attorney or to the Court, and the Court may compel the witness to answer the question, if it appear to be a proper one, by imposing a fine not exceeding one hundred dollars, and by committing the party to jail until he is willing to testify.

ART. 382. Witnesses shall first be sworn by the foreman not to divulge, either by words or signs, any matter about which they may be interrogated, and to keep secret all proceedings which may be had in their presence.

ART. 383. The Grand Jury in propounding questions to a witness, shall not ask in general terms, whether he has knowledge of the violation of any particular law, by any person, but shall name the person accused, shall state the offence with which he is charged, the county where the offence is said to have been committed, and, as nearly as may be, the time of the commission of the offence.

ART. 384. The duty of Grand Jurors is to enquire of offences against the laws indictable within their respective counties; they cannot, therefore, make any general presentment, upon any political, religious or moral subject.

ART. 385. After all the testimony which is accessible to the Grand Jury shall have been given in respect to any criminal accusation, the vote shall be taken as to the presentment of a bill of indictment, and if twelve members concur in finding the bill, the foreman shall make a memorandum of the same, for the purpose of enabling the District Attorney to write the indictment.

ART. 386. The memorandum, furnished the District Attorney, shall state the name of the defendant, if known, the

nature of the offence, the time and place of its commission, and the name of the witnesses on whose testimony the accusation is sustained.

ART. 387. The District Attorney shall prepare all indictments which have been found by a Grand Jury, with as little delay as possible, and when so prepared shall deliver them to the foreman.

ART. 388. When the Grand Jury shall have acted upon any accusation before them, and the indictment has been prepared with the requisite form, they shall, in open Court, deliver the indictment to the Judge of the Court, a quorum at least being present on such occasions.

ART. 389. The fact of the presentment of the indictment, in open Court, by the Grand Jury, shall be entered upon the minutes of the proceedings of the Court, noting briefly the style of the criminal action, and the offence charged.

CHAPTER III.

OF INDICTMENTS AND INFORMATIONS.

ARTICLE 390. All felonies shall be presented by indictment only, except in cases specially provided for.

ART. 391. All misdemeanors may be presented by either information or indictment.

ART. 392. All offences known to the Penal Law of this State, must be prosecuted either by indictment or information. This provision does not include fines and penalties for contempt of Court, nor special cases in which inferior courts exercise jurisdiction.

ART. 393. By the term *penal law*, as used in the preceding Article and elsewhere, is meant THE PENAL CODE, THE CODE OF CRIMINAL PROCEDURE, and all laws passed by the Legislature amendatory of either of those Codes.

ART. 394. An indictment is the written statement of a Grand Jury, accusing a person, therein named, of some act or omission, which, by law, is declared tc be an offence.

ART. 395. An indictment shall be deemed sufficient if it has the following requisites:

1. It shall commence "In the name and by the authority of the State of Texas."

2. It must appear therefrom that the same was presented in a court having jurisdiction of the offence set forth.

3. It must appear to be the act of a Grand Jury of the proper county.

4. It must contain the name of the accused, or state that his name is unknown, and give some description of him, and assign to him a fictitious name.

5. It must show that the place, where the offence was committed, is within the jurisdiction of the Court in which the indictment is presented.

6. The time alleged must be some date anterior to the presentment of the indictment, and not so remote as that the prosecution of the offence is barred by limitation.

7. The offence must be set forth in plain and intelligible words.

8. The indictment must conclude "against the peace and dignity of the State."

9. It shall be signed officially by the foreman of the Grand Jury.

ART. 396. It is not necessary to state in an indictment anything which it is not necessary to prove.

ART. 397. The words of an indictment shall be taken and understood according to their usual meaning in ordinary language, except where a word or phrase is used, which by the laws of the State is defined particularly; in such case the word or phrase shall bear that particular meaning.

ART. 398. The certainty required in an indictment, is such as will enable the accused to plead the judgment that may be given upon it, in bar of any prosecution for the same offence.

ART. 399. Where a particular intent is a material fact in the description of the offence, it must be stated in the indictment. But in any case where an intent to defraud is required to constitute an offence, it shall be sufficient to allege an intent to defraud, without naming therein the particular person intended to be defrauded.

ART. 400. When by law the District Court of more than one county has jurisdiction of the same offence, the indictment may allege the offence to have been committed in the county where the same is prosecuted, or in any county or place where the offence was actually committed.

ART. 401. No objection shall be heard by motion, plea, exception, or in any other manner to an indictment, on the ground that the Grand Jury finding the same was not legally constituted. Any objection to the qualification of one or all of the Grand Jurors may be made available in the manner provided in Article 363, and following Articles, and in no other way.

ART. 402. An *information* is a written statement filed and presented in behalf of the State by the District Attorney, accusing the defendant therein named of an offence which is by law subject to be prosecuted in that manner.

ART. 403. An information is sufficient if it have the following requisites:

1. It shall commence "In the name and by the authority of the State of Texas.

2. That it appear to have been presented in a court having jurisdiction of the offence set forth.

3. That it appear to have been presented by the proper officer.

4. That it contain the name of the person accused, or be stated that his name is unknown, and some fictitious name be assigned to him.

5. It must appear that the place where the offence is charged to have been committed, is within the jurisdiction of the court where the information is filed.

6. That the time of the commission of the offence be some date anterior to the filing of the information, and that the offence does not appear to be barred by limitation.

7. That the offence be set forth in plain and intelligible words.

8. That the information conclude, "against the peace and dignity of the State."

ART. 404. An information shall not be presented by the District Attorney, until oath has been made by some credible person, charging the defendant with an offence. This oath shall be reduced to writing and filed with the *information*. It may be sworn to before the District Attorney, who, for that purpose, shall have power to administer the oath, or it may be made before any officer authorized by law to administer oaths.

ART. 405. When a fictitious name is given in an indictment or information, it must be therein stated that the proper name of the defendant is not known, but that the name given is used for his true name.

ART. 406. The rules laid down in Articles 397, 398, 399, 400 and 401, with respect to indictments, are applicable also to informations.

CHAPTER IV.

OF PROCEEDINGS PRELIMINARY TO TRIAL.

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§ I.

Of Enforcing the Attendance of the Defendant, and of Forfeiture of Bail.

ARTICLE 407. Wherever a defendant is bound by recognizance or bail bond, to appear at any term of a Court, his name shall be called at the door of the court-house, on the day set apart for taking up the criminal docket, or on any subsequent day when his case comes up for trial, and if he fail to appear, a forfeiture of his recognizance or bail bond, shall be taken.

ART. 408. Recognizances, and bail bonds, are forfeited in the following manner: The name of the defendant, and of his sureties, shall be called distinctly at the door of the court-house, and if the defendant do not appear within a reasonable time after such call is made, judgment shall be entered that the State of Texas recover of the defendant the amount of money in which he is bound, and of his sureties the amount of money in which they are respectively bound, which judgment shall state that the same will be made final unless good cause be shown, at the next term of the Court, why the defendant did not appear.

ART. 409. After the adjournment of the Court at which the proceedings set forth in the last two Articles have been had, a citation shall issue from the Court, notifying the sureties of the defendant, that the recognizance or bond has been forfeited, and requiring them to appear at the next term of the Court, and show cause why the same should not be made final; but it shall not be necessary to give notice to the defendant.

ART. 410. At the next term of the Court after forfeiture of the recognizance or bond, as provided for in Articles 407 and 408, if the sureties have been duly notified, or at the first

term of the Court after the service of such notice, the sureties shall answer in writing, and show cause why the defendant did not appear, which answer may be filed within the time limited for answering in a civil action.

[ART. 411.] *a**

ART. 412. Sureties shall be entitled to notice by service of a citation, the length of time, and in the manner required in civil actions; and, if any surety fail to appear after such notice, and show sufficient cause for the non attendance of the defendant, the judgment against him shall be made final at any time after the expiration of the time allowed for answering in a civil suit.

ART. 413. The following causes will exonerate the defendant and his sureties from liability upon the recognizance or bail bond.

1. The death of the defendant before the term of the Court at which the forfeiture was taken.

2. The sickness of the defendant, or some uncontrollable circumstance, which prevented his appearance at Court, and it must in every case be shown that his failure to appear arose from no fault on his part.

3. Failure to present an indictment or information at the first term of the Court, which may be held after the defendant has been admitted to bail, in cases where the party was bound over before indictment or information, and the prosecution has not been continued by order of the Court, as prescribed in Article 537.

ART. 414. The causes mentioned in the second subdivision of the preceding Article, shall not be deemed sufficient to exonerate the defendant or his sureties, unless he appear before final judgment on the bond or recognizance.

ART. 415. If, before final judgment is entered against the bail, the defendant appear, or be arrested and lodged in the Jail of the proper county, the Court may, at its discretion, remit the whole or part of the sum specified in the bond or recognizance.

ART. 416. When the defendant appears before the entry of final judgment, and sufficient cause is shown for his failure

* See note at the end of the Code.

to appear before the forfeiture taken, and a trial is had of the criminal action pending against him, he shall be entitled to have the forfeiture set aside and the criminal action against him shall stand for trial, but the State shall not be forced to try the same until reasonable time has been allowed to prepare for trial; and the State shall, in such case, be entitled to a continuance of the cause.

ART. 417. When, upon a trial of the issue presented by the answers of the sureties, no sufficient cause is shown for the failure of the defendant to appear, the judgment shall be made final against him and his sureties, for the amount in which they are respectively bound: and the same shall be collected by execution, as in civil actions. Separate executions shall issue against each party for the amount adjudged against him, and the costs be equally divided between the sureties, if there be more than one.

ART. 418. Where a defendant has been held to bail, or recognized to appear, and has failed to appear when called as prescribed in Article 407, a capias shall be issued, for his arrest.

ART. 419. In cases where the defendant has not been arrested or held to bail, before indictment or information is presented, there shall be issued a capias for his arrest, as provided in the succeeding Articles.

ART. 420. A capias is a writ issued by the Clerk of the District Court, and directed "To any Sheriff of the State of Texas," commanding him to arrest a person accused of an offence, and bring him before that Court forthwith, or on a day, or at a term stated in the writ.

ART. 421. A capias shall be held sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas."

2. That it name the person whose arrest is ordered, or if unknown describe him.

3. That it specify the offence of which the defendant is accused, and it appear thereby that he is accused of some offence against the penal law of the State.

4. That it name the day or term when the same is returnable, or be made returnable forthwith.

5. That it be dated and signed by the Clerk, with his seal of office annexed.

ART. 422. A capias shall be immediately issued upon each indictment or information presented, except in cases where the defendant is already in custody or on bail.

ART. 423. A capias shall not lose its force or virtue, if not executed and returned at the time fixed in the writ, but may be executed at any time afterwards, and return made, and all proceedings under such capias shall be as valid as if the same had been executed and returned within the time specified in the writ.

ART. 424. When a defendant indicted for felony is not arrested during the term at which the indictment is presented, the Court in all bailable cases shall, before adjourning, fix the amount of the bail to be required, and the same shall be entered upon the minutes; and in issuing the writ, the Clerk shall specify therein the amount of the bail to be taken. But in case of neglect to comply with either of the requirements of this Article, the arrest of the defendant and the bail bond taken by the Sheriff, shall be as legal and valid as if there had been no such omission.

ART. 425. A defendant may be arrested under a capias, by any peace officer; but, when so arrested, he shall be delivered to the Sheriff (together with the writ under which he was taken) to be dealt with as the law requires.

ART. 426. The Sheriff has authority in cases of misdemeanor, at all times, whether during a term of a Court, or in vacation, to take bail of the defendant; and he may take bail in cases of felonies, less than capital, when he makes an arrest under capias during vacation.

ART. 427. In cases of arrest for felony, during a term of a Court, the Sheriff cannot take bail, but must forthwith bring the defendant before the Court, that he may be dealt with according to law.

ART. 428. Where an arrest is made under a capias during vacation, the Sheriff shall, in a capital case, confine the de-

fendant in Jail, and the capias shall, for that purpose, be a sufficient warrant of commitment.

ART. 429. When, in accordance with the provisions of Articles 424 and 425, the Sheriff is authorized to take bail, he shall require of the defendant to enter into bond with one or more sureties, in the amount specified in the writ, and if no amount is specified, then in such sum as he may deem reasonable.

ART. 430. The provisions of Articles 426, 427, 428, and 429, refer to arrests made in the county where the prosecution is pending.

ART. 431. In every capital case, when a defendant is arrested, under capias, in a county other than that in which the prosecution is pending, it is the duty of the Sheriff who arrests, or to whom the defendant is delivered by some other peace officer, to convey him forthwith to the county from which the capias issued, for which service he is entitled to be paid according to the provisions of Article 952, and a failure to discharge the duty herein imposed, renders the Sheriff guilty of an offence.

ART. 432. When an arrest is made out of the county in which the prosecution is pending, in cases of felony, less than capital, and of misdemeanor, the Sheriff is authorized to receive from the defendant, bail according to the directions of the capias, or if no amount be fixed in the writ, then in some reasonable amount ; and he shall transmit, through the mail, to the Clerk of the proper Court, the bail bond and the capias, with his return thereon. But a Sheriff may, in any case convey the defendant and deliver him to the Sheriff of the proper county.

ART. 433. When a defendant, in a bailable case is arrested under capias, out of the county of the prosecution, and refuses to give bail, the Sheriff may place him in the Jail of the county where the arrest is made, or he may convey him to the proper county, and deliver him to the Sheriff thereof.— When the defendant is placed in Jail out of the county of the prosecution, it is the duty of the Sheriff making the arrest, immediately to give notice through the mail, of such arrest and confinement, to the Sheriff of the county where the pros-

ecution is pending, whose duty it shall be to convey such defendant without delay to the Jail of his county.

ART. 434. If a defendant be placed in Jail, out of the county of the prosecution, he shall be discharged from custody if not applied for and taken by the Sheriff of the proper county, before the end of ninety days from the time of his commitment; provided, that this Article shall not apply to cases where the defendant has been placed in Jail out of the county of the prosecution, under some provision of this Code for want of a sufficient or safe Jail in the county of the prosecution.

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§ II.

Of Witnesses and the Manner of Enforcing their Attendance.

ARTICLE 435. A subpœna may be issued to any county, on application to the Clerk, for witnesses either for the State or defendant.

ART. 436. In cases of felony, after indictment found, the State or the defendant shall be entitled, on application to the Court, to a writ of attachment against the person of a witness, to compel his attendance upon any day set apart for the trial of a particular cause, or for taking up the criminal docket.

ART. 437. To obtain the writ of attachment, it is not necessary, in a case of felony, that a subpœna shall have issued, or that the defendant shall have entered into recognizance or given bond; nor shall it be necessary to tender the witness his expenses or fees; and the writ may be issued to any county of the State, but when issued to any county other than that where the prosecution is pending, oath shall be made by the defendant if he applies for the attachment, or by some credible person, when applied for by the State, setting forth the facts expected to be proved, and it must appear to the Court that the testimony sought is material.

ART. 438. A subpœna is a writ issued to the Sheriff, or other proper officer, commanding him to summon a person therein named, to appear at a certain term of the Court, or on a certain day, to testify in a criminal action, or upon any proceeding before an examining Court, Coroner's Inquest, the Grand Jury, or before a Judge hearing an application under habeas corpus. If issued by the Clerk of the District Court to another county, (but in no other case,) it shall be authenticated by his official seal.

ART. 439. An attachment is a writ issued by a Clerk of the District Court, or by any Magistrate upon examination of a criminal accusation, or in any other proceeding before him when authorized by law, or by a Judge sitting in cases of habeas corpus, commanding some peace officer to take the body of a witness and bring him before such Court, Magistrate or Judge, on a day named, to testify in behalf of the State or of the defendant, as the case may be ; when issued by a Clerk it shall be authenticated by his official seal.

ART. 440. No attachment shall be issued for a witness, in a case of misdemeanor, until it has been shown that he refuses to obey a subpœna, or that he fails to attend on some day set apart for the criminal docket, after having entered into recognizance or bond, whether with or without security.

ART. 441. It shall be understood that a witness refuses to obey a subpœna :

1. If he is not in attendance on the Court, on the day set apart for taking up the criminal docket, or any day subsequent thereto, and before the final disposition or continuance of the particular case in which he is a witness.

ART. 442. Witnesses on behalf of the State or defendant may, at the request of either party, be required to enter into recognizance in the District Court, to appear and testify in a criminal action.

ART. 443. A witness who makes affidavit that he is unable to give security, or to deposit a sufficient amount of money in lieu thereof, shall be recognized, or give bond, without security.

ART. 444. If a witness refuse to obey a subpœna, in a

capital case, he shall be fined, at the discretion of the Court, not exceeding five hundred dollars. Judgment may be entered on motion, of either the District Attorney of the defendant, or his counsel, against such defaulting witness, which, however, shall not be made final, until the witness has been duly notified to show cause why he did not appear.

ART. 445. A refusal to obey a subpœna in case of felony, less than capital, shall subject the witness to a fine not exceeding two hundred dollars; and in cases of misdemeanor, to a fine not exceeding one hundred dollars.

ART. 446. Before a fine is entered against a witness, for disobedience to a subpœna, it must be made to appear to the Court, by the oath of the defendant, or some other credible person, or the statement of the District Attorney, that the testimony of such witness was material, either to the prosecution or defence.

ART. 447. When a fine is entered against a witness, for failure to appear and testify, the judgment shall be conditional, and a citation shall issue to him to show cause why the same should not be made final; and such citation shall be served in the manner, and for the length of time prescribed for citations in civil actions.

ART. 448. Witnesses cited to show cause, as provided in the preceding Article, may do so in writing or verbally, at any time during the term of the Court next after they are cited.

ART. 449. When a fine has been entered against a witness, but no trial of the cause takes place, and such witness afterward appears and testifies upon the trial thereof, it shall be discretionary with the Judge, though no good excuse be rendered, to reduce the fine or to remit it altogether; but he shall, nevertheless, be adjudged to pay all the costs accruing in the proceeding against him by reason of his failure to attend.

ART. 450. When a witness has given bail either in the District Court, or before the Magistrate, for his appearance, the recognizance or bail bond may be enforced against such witness and his sureties, in the manner pointed out in Articles

407, 408, 409, and 410, for recovery upon the recognizance or bail bond of the defendant.

ART. 451. When no security was given by a witness, but his individual recognizance or bond was taken, judgment final may, upon his failure to appear, be entered against him for the amount in which he is bound; which judgment, however, he may have set aside by showing, at any time within twelve months after the rendition thereof, sufficient cause for his failure to attend.

ART. 452. It shall be in the discretion of the Court to judge of the sufficiency of an excuse rendered by a witness; but this discretion is to be so exercised as to require the utmost strictness in receiving such excuse.

ART. 453. The sureties of a witness have no right in any case, to discharge themselves by the surrender of such witness, after the forfeiture of their recognizance or bond.

ART. 454. Witnesses in criminal cases shall be allowed one dollar and fifty cents a day, for each day they are in attendance upon the Court, and six cents for each mile they may travel in going to or returning from the place of trial. But the State shall in no case pay costs as witness fees.

ART. 455. The State shall in no case pay witness fees or cost.

ART. 456. The defendant, on acquittal, shall, nevertheless, in all cases, be bound for the fees of his own witnesses.

ART. 457. Upon conviction, in all cases, the costs accruing from the attendance of witnesses, shall be taxed against the defendant.

§ III.

Service of a Copy of the Indictment.

ARTICLE 458. In every case of felony, when the accused is in custody, or as soon as he may be arrested, it shall be the duty of the Clerk of the Court, where an indictment has been presented, immediately to make out a correct copy of the same, and deliver such copy to the Sheriff, who shall immediately deliver the same to the defendant.

ART. 459. In misdemeanors, it shall not be necessary before trial to furnish the defendant with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given at as early a day as possible; but no trial shall be delayed by reason of a failure to comply with such demand.

ART. 460. When the defendant, in cases of felony, is on bail at the time the indictment is presented, it is not necessary to serve him with a copy; but the Clerk shall deliver a copy of the same to the defendant, or his counsel, when requested, at the earliest possible time; but no trial shall be delayed by reason of a failure to deliver the copy upon such demand.

§ IV.

Of Arraignment, and of Proceedings where no Arraignment is necessary.

ARTICLE 461. There shall be no arraignment of a defendant except upon an indictment for a capital offence.

ART. 462. An arraignment takes place for the purpose of reading to the defendant the indictment against him, and hearing his answer thereto.

ART. 463. No arraignment shall take place until the expiration of at least two entire days after the day on which a copy of the indictment was served on the defendant, unless the right to such copy or to such delay be waived, or the defendant was on bail.

ART. 464. Two days service of a copy of the indictment is allowed the defendant, in order that he may, within that time, file written pleadings, and that the same may be disposed of; and the Court shall, before proceeding to have the defendant arraigned, ascertain whether any motion, exception or plea to the jurisdiction has been filed; and if any such pleading is filed, it shall be disposed of before arraignment.

ART. 465. The allowance of two days for filing written pleadings is not to be so construed as to preclude the defendant from filing the same at any time, before he is arraigned; the provision with respect thereto is intended to give at least two days for making such defence, before any arraignment can take place.

ART. 466. When the defendant is brought into Court, for the purpose of being arraigned, if it appear that he has no counsel, and is too poor to employ counsel, the Court shall appoint one or more practising attorneys to defend him.

ART. 467. If written pleadings have been filed in the cause, they shall be heard and determined before arraignment; and where the defendant is too poor to employ counsel, the counsel appointed by the Court shall have one entire day after their appointment, within which to file such pleadings; but if no such pleadings be filed within that time, or if filed, are disposed of, the defendant may again, after the expiration of the day allowed, be brought into Court and arraigned.

ART. 468. When the defendant is arraigned, his name, as stated in the indictment, shall be distinctly called; and, unless he suggest by himself or counsel, that he is not indicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defence.

ART. 469. If the defendant, or his counsel for him, sug-

gest that he bears some name different from that stated in the indictment, the same shall be noted upon the minutes of the Court, the indictment amended, the style of the cause changed, so as to give his true name, and the cause proceed, as if the true name had been first recited in the indictment.

ART. 470. If the defendant allege that he is not indicted by his true name, and refuse to say what his real name is, the cause shall proceed as if the name stated in the indictment were true, and the defendant shall not be allowed to contradict the same by way of defence.

ART. 471. Where a defendant is described as a person whose name is unknown, and is indicted by a fictitious name, he may have the indictment so corrected as to give therein the true name; but unless he elect to do this, the cause shall proceed as if the fictitious name used were the real name of the defendant, and he may be tried and convicted, or acquitted under such fictitious name.

ART. 472. The name of the accused having been called, if no suggestion, such as is spoken of in the four preceding Articles, be made, or being made, is disposed of as before directed, the indictment shall be read, and the defendant asked whether he is guilty or not, as therein charged.

ART. 473. If the defendant answer that he is not guilty, the same shall be entered upon the minutes of the Court; if he refuse to answer, the plea of not guilty shall in like manner be entered.

ART. 474. After a plea of not guilty, no motion to set aside, or special plea, or exceptions to an indictment shall be received.

ART. 475. If the defendant plead guilty, he shall be admonished by the Court of the consequences; and no such plea shall be received, unless it plainly appear that he is sane, and is uninfluenced by any considerations of fear, by any persuasion, or delusive hope of pardon prompting him to confess his guilt.

ART. 476. Where a defendant persists in pleading guilty,

if the punishment of the offence is not absolutely fixed by law, and beyond the discretion of the Jury to graduate in any manner, a Jury shall be impanneled to assess the punishment, and evidence submitted to enable them to decide thereupon.

ART. 477. The preceding Article refers to offences of every description, whether felonies or misdemeanors, but in no case shall judgment of death be given, except upon the verdict of a Jury, rendered after investigation of the facts. upon evidence submitted.

ART. 478. In all cases where it is not required that the defendant be arraigned, he shall be required before the time at which his trial commences, to plead whether or not he is guilty, as charged in the indictment.

ART. 479. The same proceedings shall be had in cases of felony less than capital, with respect to the name of the defendant, and the amendment of the indictment, as are provided in Articles 468, 469, 470 and 471, with respect to such proceedings in capital cases.

ART. 480. The plea of not guilty shall, in every criminal action, be entered, where the defendant refuses to answer; and in all cases of felony, when a plea of guilty is offered, like proceedings shall be had as are directed in Articles 475 and 476, in relation to capital offences. But in misdemeanors, punishable by fine, not exceeding one hundred dollars, and without imprisonment, the District Attorney may consent that the Jury affix the lowest penalty of the law: or where no minimum is established, he may agree to a fine not less than ten dollars.

§ V.

Of the Pleadings in Criminal Actions.

ARTICLE 481. The only pleading in criminal actions, on the part of the State, is the indictment or information.

ART. 482. On the part of the defendant the following are the only pleadings:

1. The motion to set aside the indictment or information.

2. A special plea, setting forth one or more facts, as cause why the defendant ought not to be tried upon the indictment or information presented against him.

3. An exception to the indictment or information, for some matter of form or substance.

4. A plea of guilty.

5. A plea of not guilty.

ART. 483. A motion to set aside an indictment or information, shall be based on one or more of the following causes, and no other:

1. That it appears by the records of the Court, that the indictment was not found by at least twelve Grand Jurors, or that the information was not presented after oath made as required in Article 404.

2. That some person not authorized by law, was present when the Grand Jury were deliberating upon the accusation against the defendant, or were voting upon the same, and the issue of fact, arising thereon, shall be tried by the Judge without a Jury.

ART. 484. The only special pleas which can be heard for the defendant are:

1. That he has been before convicted, legally, in a court of competent jurisdiction, upon the same accusation, after having been tried upon the merits, for the same offence.

2. That he has been before acquitted by a Jury, of the accusation against him, in a court of competent jurisdiction, whether the acquittal was regular or irregular.

3. That the Court before whom he is prosecuted has no jurisdiction to try the cause.

ART. 485. Every special plea shall be verified by the affidavit of the defendant.

ART. 486. The plea to the jurisdiction shall be tried by the Court; all issues of fact, presented by a special plea, shall be tried by a Jury.

ART. 487. There is no exception to the substance of an indictment or information, except:

1. That it does not appear from the face of the same, that any offence against the law was committed by the defendant.

2. That it appears from the indictment or information that a prosecution for the offence is barred by lapse of time; or that the offence was committed after the finding of the indictment.

3. That it contains matter which is a legal defence or bar to the prosecution.

ART. 488. Exceptions to the form of the indictment or information, may be taken for the following causes only:

1. That the indictment or information does not appear to have been presented in the proper Court as required by Article 395 or 403.

2. The want of any other requisite of form prescribed by Articles 395 and 403, except the want of the signature of the foreman of the Grand Jury.

ART. 489. All motions to set aside an indictment or information, all special pleas and exceptions, shall be in writing; and they shall all be filed at the same time.

ART. 490. Two entire days after the service of a copy of the indictment, shall be allowed in every case, (where the law requires such service to be made,) before the defendant can be compelled to file written pleadings.

ART. 491. In cases where no service of a copy is required, two entire days shall be allowed after the presentment of the indictment or information, for the defendant to file written pleadings.

ART. 492. The two preceding Articles refer to cases where a defendant has been arrested before indictment found, and is, at the time of the presentment of the same, on bail, or in custody.

ART. 493. If a criminal action be continued by the State or by operation of law, the defendant may file his pleadings at any time on or before the second day of the term after such

continuance, except in cases where an arraignment has already taken place.

ART. 494. Two entire days as here and elsewhere used, mean two days exclusive of all fractions of a day.

ART. 495. Where a defendant has never been arrested before indictment or information, and is arrested during the term of the Court at which the prosecution is commenced, he shall be allowed two entire days after his arrest, in which to file written pleadings; or if it be a case in which he is entitled to be served with a copy of the indictment, he shall be allowed two entire days after service of a copy thereof.

ART. 496. If, after the adjournment of the Court, the arrest takes place, a defendant shall be allowed to file written pleadings at any time on or before the second day of the next term of the Court in which the prosecution is pending; where he is entitled to be served with a copy of the indictment, he may file such pleadings within two days after the service thereof; and if the service be made during vacation, he may file such pleadings at any time on or before the second day of the term of the Court next after receiving a copy of the indictment.

ART. 497. The plea of "not guilty" shall be made orally, and noted upon the minutes of the Court. It shall be construed to be a denial of every material allegation in the indictment. Under the plea of "not guilty," evidence to establish the insanity of the defendant, and every fact whatever, tending to acquit him of the accusation, may be introduced, except such facts as, by Article 484, are proper for a special plea.

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§ VI.

Of the Argument and Decision of Motions, Pleas and Exceptions.

ARTICLE 498. In every case where a motion to set aside an indictment or information, or a special plea or exception,

has been filed, the Court shall decide upon such pleadings at the earliest possible day consistent with a due administration of justice; and for that purpose shall, on the day set for the trial of the criminal docket, take up for argument and decision all such pleadings as are then filed.

ART. 499. The provisions of the preceding Article shall not preclude the hearing and determination at any other time, of all written pleadings which are to be tried by the Court.

ART. 500. The counsel of the defendant has the right to open and conclude the argument in such cases.

ART. 501. Where the matters, involved in any such written pleading, depend in whole or in part upon testimony either written or verbal, and not altogether upon the record of the Court, every process known to the law may be obtained, either on behalf of the State or of the defendant, for the purpose of procuring such testimony; but there shall be no delay on account of the want of the testimony, unless it be shown to the satisfaction of the Court, that all the means given by law have been used to procure the same.

ART. 502. The motion to set aside an indictment, all exceptions and such special pleas as are to be tried by the Judge without a Jury, shall be heard together, and shall be decided without delay.

ART. 503. Such special pleas as set forth matter of fact proper to be tried by a Jury, shall be submitted and tried with the plea of "not guilty."

ART. 504. Where the motion to set aside an indictment, or information, or an exception to the same, is sustained, the defendant, in a case of misdemeanor, shall be discharged, but may be again prosecuted within the time allowed by law.

ART. 505. If the motion to set aside, or the exception to the indictment or information, be sustained, the defendant shall not therefore be discharged, but in cases of felony, may be immediately recommitted by the order of the Court, upon motion of the District Attorney, or without motion. And

proceedings may be afterwards had against him, as if no prosecution had ever been commenced.

ART. 506. Where, after the motion or exception is sustained, it is made known to the Court by sufficient testimony, that the offence of which the defendant is accused, will be barred by limitation before another indictment or information can be preferred. he shall in every case be fully discharged.

ART. 507. If the exception to an indictment or information, is made upon the ground that there is no offence against the law charged therein, the defendant shall be discharged, unless an affidavit be filed accusing him of the commission of an offence punishable by law.

ART. 508. When the exception to an indictment or information is merely on account of form, the same shall be amended, if decided to be defective, and the cause proceed upon such amended indictment or information.

ART. 509. Where a special plea is filed by the defendant, the District Attorney may except to its sufficiency, for substantial defects ; and if the exception be sustained, the plea may be amended.

ART. 510. If the plea be not excepted to, it shall be considered that issue is taken upon the same.

ART. 511. When a special plea alleges that the defendant has been before acquitted or convicted of the same offence, upon a trial in a Justice's Court, and it appears on the trial, that, from the facts proved, or the law governing the case, that Court had no jurisdiction, the former conviction or acquittal shall have no effect whatever, and it is not necessary for the District Attorney to reply to the plea in order to present the question of jurisdiction.

ART. 512. Judgment shall in no case be given against the defendant, where his motion, exception, or plea is overruled ; but he shall in all cases be allowed to plead not guilty. If he refuse to plead, it shall be considered as if the plea were offered, and be noted accordingly.

§ VII.

Of Continuances.

ARTICLE 513. Criminal actions are considered as continued by operation of law, when there is not sufficient time for trial at any particular term of a Court, or where the defendant has not been arrested.

ART. 514. The trial of a criminal action may be postponed on the written application of the State, or of the defendant, upon sufficient cause shown.

ART. 515. Upon the first application by the District Attorney, he shall make a statement in writing, in which he shall set forth the cause for continuance ; and if the same be asked on account of the absence of a witness, he must set forth that the testimony is material, and that the process authorized by law has been issued or applied for, or must show some sufficient excuse for failing to apply therefor. The issuance of, or application for a subpœna, shall not be considered due diligence in cases where the law authorizes the issuance of an attachment.

ART. 516. The District Attorney, on any subsequent application for a continuance, must also set forth in writing the facts he expects to establish by the witness, and must state that he expects to be able to procure his attendance at the next term of the Court.

ART. 517. If the cause of continuance be any other than the want of attendance on the part of a witness, the District Attorney shall distinctly set it forth in his written application.

ART. 518. It shall be sufficient upon the first application, by the defendant, for a continuance, if the same be for want of a witness, to state—

1. The name of the witness and his residence, if known, or that his residence is not known.

2. The diligence which has been used to procure his attendance ; and it shall not be considered sufficient diligence to

have caused to be issued, or to have applied for a subpœna, in cases where the law authorizes the issuance of an attachment.

3. The facts which are expected to be proved by the witness; and it must appear to the Court that they are material.

4. That the witness is not absent by the procurement or consent of the defendant.

5. That the application for continuance is not made for delay.

ART. 519. Subsequent applications for continuances on the part of the defendant, shall in addition to the requisites in the preceding Article, state also,

1. That the testimony cannot be procured from any other source.

2. That the defendant has a reasonable expectation of procuring the same at the next term of the Court.

3. And in cases where depositions are allowable, he must also show that due diligence has been used, to take the deposition of the witness.

ART. 520. A criminal action may be continued on the application of the defendant, for good cause other than the absence of a witness; but he shall in all cases set forth fully and distinctly, the ground on which the continuance is asked.

ART. 521. All applications for continuance, on the part of the defendant, must be sworn to by himself.

ART. 522. It shall not be necessary to file any written motion for a continuance; the motion based upon the written statement may be made orally.

ART. 523. No application for a continuance shall be heard until after all motions, special pleas, and exceptions have been filed and acted upon by the Court; provided that two days shall have elapsed after the service of a copy of the indictment where such service is required to be made, or that two days have elapsed from the presentment of the indictment or information, where service of a copy is not necessary; and after the continuance of a cause on the application of the defendant, he shall not at the next, or any subsequent term of the Court, be permitted to interpose any other plea than that of not guilty.

ART. 524. If a defendant in a capital case demand a trial, and it appear that more than one continuance has been granted to the State, and that the defendant has not before applied for a continuance, he shall be entitled to be admitted to bail.

ART. 525. After the grant of more than two continuances to the State, in any criminal action, the defendant shall be entitled to a discharge upon his individual recognizance.

ART. 526. A continuance may be granted on the application of the defendant, after the trial has commenced, where it is made to appear to the satisfaction of the Court, that by some unexpected occurrence, since the trial commenced, which no reasonable diligence could have anticipated, the defendant is so taken by surprise that he cannot then have a fair trial; or the trial may be postponed to a subsequent day of the term.

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§ VIII.

Change of Venue.

ARTICLE 527. A change of venue may be granted on the written application of the defendant, supported by his own affidavit, and the affidavit of at least two other respectable persons, for either of the following causes.

1. That there exists in the county where he is prosecuted, so great a prejudice against him that he cannot, to the best of his belief, obtain a fair and impartial trial.

2. That there is a dangerous combination against him, instigated by influential persons, by reason of which he cannot expect a fair trial.

ART. 528. Where an unsuccessful effort has been once made in any county to procure a Jury for the trial of a felony, and all reasonable means have been used, if it be made to appear to the Court, by the written affidavit of the District Attorney, or any other credible person, that no Jury can probably be had in that county, the Court may order a change

of venue, and cause the reasons therefor to be placed upon the minutes of the proceedings.

ART. 529. The venue shall not, in any case, be changed upon the application of the defendant, until after all motions, special pleas, and exceptions have been filed and acted upon, and if overruled the plea of not guilty entered.

ART. 530. Upon the grant of a change of venue, the criminal cause shall be removed to some adjoining county, the court-house of which is nearest to the court-house of the county where the prosecution is pending, unless it be made to appear in the application, that such nearest county is subject to some objection, sufficient to authorize a change of venue in the first instance.

ART. 531. If it be shown in the application for a change of venue or otherwise, that all the counties adjoining that in which the prosecution is pending, are subject to some valid objection, the cause may be removed to such county as the Court may think proper.

ART. 532. When an order for a change of venue has been made, the Clerk of the Court, where the prosecution is pending, shall make out a true transcript of all the orders made in the cause, and shall transmit the same to the proper county, and shall send the original papers also with the transcript.

ART. 533. The Clerk shall also make a correct copy of all the original papers where a change of venue is ordered, and shall retain such copy in his office, to be used in case the originals, or any of them be lost.

ART. 534. When a change of venue is ordered, and the defendant is on bail, he shall be required to enter into recognizance forthwith, conditioned for his appearance before the proper Court, at the next succeeding term thereof; or if the Court of the county to which the cause is taken be then in session, he shall be recognized to appear before said Court, on a day fixed, and no change of venue shall take effect until after the defendant has been so recognized.

ART. 535. When the venue is changed in any criminal action, if the defendant be in custody, an order shall be made

for his removal to the proper county, and his delivery to the Sheriff thereof before the next succeeding term of the District Court of the county to which the case is to be taken ; and he shall be removed by the Sheriff accordingly, and delivered as directed in the order.

ART. 536. If the District Court of the county to which the case is removed be then in session, the defendant shall be removed forthwith and delivered to the Sheriff of such county.

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§ IX.

Of Dismissing Prosecutions.

ARTICLE 537. When a defendant has been detained in custody, or held to bail for his appearance to answer any criminal accusation before the District Court, the prosecution, unless otherwise ordered by the Court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant at the next term of the Court which is held after his commitment or admission to bail.

ART. 538. The District Attorney may, by permission of the Court, dismiss a criminal action at any time.

TITLE V.

OF TRIAL AND ITS INCIDENTS.

CHAPTER I.

OF THE MODE OF TRIAL.

ARTICLE 539. The only mode of trial upon issues of fact, in the District Court, is by a Jury of twelve men, unless in cases specially excepted.

ART. 540. In all prosecutions for felonies the defendant must be personally present on the trial; and he must likewise be present in all cases of indictment or information for misdemeanors where the punishment is imprisonment in Jail.

ART. 541. In all other cases of misdemeanor the defendant may appear by counsel if he has given bail, and the trial proceed without his personal presence; and he may, by consent of the District Attorney, appear by counsel in such cases where he has not given bail.

ART. 542. When the defendant, in a case of felony, is on bail, he shall, before the trial commences, be placed in the custody of the Sheriff, and his bail be considered as discharged.

ART. 543. If there be a mistrial in a case of felony, the original sureties of the defendant shall be still held bound for his appearance, unless they surrender him in open Court. In such case he shall be required to give other bail. When the surrender is made by one or more sureties only, and there are others on the bond or recognizance, those making the surrender are discharged and the others are to be considered as still bound; and additional security may be given in place of the persons so discharged.

ART. 544. There shall be kept by each District Clerk a criminal docket, in which shall be set down the style of each criminal action, the nature of the offence, the names of counsel and the proceedings had at each term of the Court.

ART. 545. The District Court shall, on the first day of its organization at each term, fix a day for taking up the criminal docket, which shall be noted on the minutes; but in case of failure to make such order the criminal docket may be taken up on any day not earlier than the third day of the term.

ART. 546. In cases of felony less than capital and of misdemeanor, the defendant is required, when his cause is called for trial, before it proceeds further, to plead by himself or counsel whether or not he is guilty.

ART. 547. By the term "called for trial" is meant the stage of the cause when both parties have announced that they are ready, or when a continuance, being applied for, has been denied.

CHAPTER II.

FORMATION OF THE JURY.

ARTICLE 548. When there is pending in any District Court a criminal action for a capital offence, the District Attorney may at any time after indictment found, on motion, obtain an order for summoning any number of persons not less than thirty-six nor more than sixty, as may be deemed advisable, from whom the Jury for the trial of such capital case is to be selected.

ART. 549. The Clerk shall, upon this order, forthwith issue a writ to the Sheriff, commanding him to summon the

number of persons named in the order to appear on a certain day therein named, to act as Jurors. This writ is called "a special venire facias."

ART. 550. The Court, in granting the order, shall, in every case, caution and direct the Sheriff to summon such men as have legal qualifications to serve on Juries, informing him of what those qualifications are, and shall further direct him, as far as he may be able, to summon men of good character, and such as are not prejudiced against the defendant or biased in his favor, if he knows of the existence of such bias or prejudice.

ART. 551. Any Sheriff who shall wilfully summon, under a special venire facias, persons whom he knows to be biased or prejudiced in favor of, or against the defendant, is guilty of an offence.

ART. 552. The Sheriff, so soon as he receives the order, shall proceed to summon the Jurors, and make return of the same to the Clerk of the Court.

ART. 553. The Clerk, immediately upon receiving the list of the names of the persons summoned under a special venire facias, shall make a copy thereof and shall furnish the same to the Sheriff, who shall deliver such copy to the defendant.

ART. 554. No defendant, in a capital case, shall be brought to trial, until he has had one entire day's service of a copy of the names of persons summoned under a special venire facias, except where he waives the right. But the service may be made at any time after indictment found, whether before or after arraignment.

ART. 555. When any capital case is called for trial, the list of persons summoned as Jurors shall be called at the Courthouse door, and such as are not present may be fined by the Court a sum not exceeding fifty dollars.

ART. 556. In forming the Jury, the names of the persons summoned shall be called in the order they stand upon the list, and, if present, shall be tried as to their qualifications, and, unless challenged, shall be impannelled.

ART. 557. When any person is not present at the time his name is called in the proper order, an attachment may, at the request of the State, or of the defendant, issue for him; but no cause shall be unreasonably delayed on account of the absence of such person.

ART. 558. A person summoned, who is not present, may, upon his appearance before the jury is completed, be impannelled as a Juror, unless challenged.

ART. 559. In impannelling the Jury, the person to be tried as to his qualifications shall first be sworn in every case to answer questions, and shall be interrogated touching his qualifications, as pointed out in Chapter III, of this Title.

ART. 560. The foregoing Articles of this Chapter are applicable to capital cases, but they shall apply also to cases of felonies less than capital, when not inconsistent with the next succeeding Articles of this Chapter.

ART. 561. A special venire facias shall, in like manner, be issued to summon persons to form a Jury in criminal actions for offences less than felony; but there shall be summoned in such cases not more than thirty-six persons, nor less than twenty-four.

ART. 562. It shall not be necessary to furnish the defendant, in any other than a capital case, with a list of the persons summoned as Jurors; but if such list be demanded by himself or counsel, a copy shall be furnished.

ART. 563. The oath administered to a Juror in any criminal action shall be as follows:

"You solemnly swear that you will a true verdict render in the case of the State of Texas against (A. B.) the defendant, so help you God."

ART. 564. The Jurors summoned on any special venire, or as many thereof as the Court may direct, may be ordered to remain in attendance from day to day until the criminal docket is disposed of for the term; and such order shall take the place of the special venire facias for each cause which may be called for trial, unless otherwise ordered by the Court.

ART. 565. In the cases contemplated in the preceding Article, the Court may direct that the calling of the persons summoned shall commence at any name on the list; after which the calling shall proceed as provided in Article 556, after reaching the bottom returning to the top of the list.

CHAPTER III.

OF CHALLENGES.

ARTICLE 566. A challenge is an objection to the impannelling of a Juror, made either by the State or by the defendant.

ART. 567. A challenge is either to the array or to a single Juror.

ART. 568. The array of Jurors summoned for the trial of any criminal action, may be challenged by the State, when it can be shown that the officer summoning the Jurors has acted corruptly, and has wilfully summoned Jurors with a view to securing an acquittal.

ART. 569. The defendant may challenge the array for the following cause only:

That the officer summoning the Jury has acted corruptly and has wilfully summoned persons upon the Jury known to be prejudiced against the defendant, and with a view to cause him to be convicted.

ART. 570. Challenges to individual Jurors are of two kinds, *peremptory* and *for cause.*

ART. 571. A peremptory challenge is made to a Juror without assigning any reason therefor.

ART. 572. In capital cases the defendant shall be entitled to twenty peremptory challenges, and the State to ten, and where there are more defendants than one tried together, each defendant shall be entitled to twelve peremptory challenges, and the State to six for each defendant.

ART. 573. In prosecutions for felonies not capital, the defendant shall be entitled to ten peremptory challenges and the State to five, and where more defendants than one are tried together, each defendant shall be entitled to six peremptory challenges, and the State to three for each defendant.

ART. 574. In misdemeanors, the State and defendant shall be each entitled to five peremptory challenges; and if there are more defendants than one tried together, each defendant shall be entitled to three peremptory challenges.

ART. 575. A challenge for cause is an objection made to a particular Juror, alleging some fact which renders him incapable or unfit to serve on the Jury. It may be made for either of the following reasons:

1. That the Juror has been convicted of some offence which, by law, disqualifies him from serving on a Jury.

2. That his name is not upon the list required to be kept by the County Court from which Jurors are drawn.

3. That he is not twenty-one years of age, a qualified elector under the Constitution and Laws, a resident of the proper county and a householder in that county, or freeholder in the State.

4. That he is insane, or has such a defect in the organs of seeing, feeling or hearing, or such bodily or mental defect or disease as renders him unfit for jury service.

These are called principal causes of challenge.

ART. 576. The following are also causes of challenge to a Juror:

1. That the Juror is related by consanguinity or affinity to the defendant, or is his master or guardian.

2. That he is related by consanguinity or affinity to the person injured by the commission of the offence, or to the private prosecutor, if there be one.

3. That he served on the Grand Jury which found the indictment.

4. That he served on a petit Jury, in a former trial of the same case.

5. That he has a bias or prejudice in favor of or against the defendant.

6. That he has formed such an opinion, whether from the evidence or from hearsay, as will, in the opinion of the Juror himself, render him not an impartial Judge of the defendant's case.

ART. 577. In testing the qualifications of a Juror, he shall himself be sworn to answer questions, and any other proof may be also heard touching the subject; but a Juror shall not be asked a question the answer to which may show that he has been convicted of an offence which disqualifies him.

ART. 578. No Juror shall, on the trial of any criminal action for felony, be impannelled when it appears that he is subject to either the first, third or fourth cause of challenge mentioned in Article 575, although both parties may consent, and it is the duty of the Court, in every case of felony, to cause questions to be asked the Juror for the purpose of testing his qualifications, under the second and third subdivisions of said Article.

ART. 579. The Court is the Judge, after proper examination, of the qualifications of a Juror.

CHAPTER IV.

OF THE TRIAL BEFORE THE JURY.

ARTICLE 580. A Jury having been impannelled in any criminal action, the cause shall proceed to trial in the following order:

1. The indictment or information shall be read to the Jury by the District Attorney.

2. The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall be so stated.

3. The District Attorney, or the counsel prosecuting in his absence, shall state to the Jury the nature of the accusation and the facts which are expected to be proved by the State in support thereof.

4. The testimony on the part of the State shall be introduced.

5. The nature of the defences relied upon shall be stated by the counsel of the defendant, and what are the facts expected to be proved in their support.

6. The testimony on the part of the defendant shall be offered.

7. Rebutting testimony may be offered on the part of the State, and of the defendant.

ART. 581. The Court shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appear that it is necessary to a due administration of justice.

ART. 582. At the request of either party, the witnesses on both sides may be sworn and placed in the custody of an officer, and removed out of the court-room to some place where they cannot hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under rule.

ART. 583. When witnesses are placed under rule, those summoned for the prosecution may be kept separate from those summoned for the defence; or they may be all kept together, as the Court shall direct.

ART. 584. Witnesses, when under rule, shall be attended by an officer, and all their reasonable wants provided for, unless the Court in its discretion direct that they be allowed to go at large.

ART. 585. When a criminal cause is to be argued the order of argument may be regulated by the presiding Judge;

but in all cases, the State's counsel shall have the right to make the concluding address to the jury.

ART. 586. In prosecutions for felony the Court shall never restrict the argument to a less number of addresses than two on each side.

ART. 587. Where two or more defendants are jointly prosecuted they may sever on the trial, at the request of either.

ART. 588. The District Attorney may at any time dismiss a prosecution, as to one or more defendants, jointly indicted with others; and the person so discharged, may be introduced as a witness by either party.

ART. 589. When it is apparent that there is no evidence against a defendant, in any case where he is jointly prosecuted with others, the Jury may be directed to find a verdict as to such defendant; and if they acquit, he may be introduced as a witness in the case.

ART. 590. Where it appears in the course of a trial that the Court has no jurisdiction of the offence, or that the facts charged in the indictment do not constitute an offence, the Jury shall be discharged.

ART. 591. If the want of jurisdiction arises from the fact that the defendant is not liable to prosecution in the county where the indictment was presented, the Court may, in cases of felony, order the defendant into custody for a reasonable length of time, to await a warrant for his arrest from the proper county; or if the offence be bailable, may require the defendant to enter into recognizance to answer before the proper Court.

ART. 592. In cases of misdemeanor, where it appears on the trial that the Court has no jurisdiction, the defendant shall be discharged.

ART. 593. The Jury are the exclusive Judges of the facts in every criminal cause, but not of the law in any case.—They are bound to receive the law from the Court, and be governed thereby.

ART. 594. After the argument of any criminal cause has been concluded, the Judge shall deliver to the Jury a written charge, in which he shall distinctly set forth the law applicable to the case; but he shall not express any opinion as to the weight of evidence, nor shall he sum up the testimony. This charge shall be given in all cases of felony, whether asked or not.

ART. 595. It is beyond the province of a Judge sitting in criminal causes to discuss the facts or use any argument in his charge, calculated to rouse the sympathy or excite the passion of a Jury. It is his duty to state plainly the law of the case.

ART. 596. After or before the charge of the Court to the Jury, the counsel on both sides may present written instructions, and ask that they be given to the Jury. The Court shall either give or refuse these charges, with or without modification, and certify thereto; and when the Court shall modify a charge it shall be done in writing and in such manner to clearly show what the modification is.

ART. 597. The general charge given by the Court, as well as those given or refused at the request of either party, shall be certified by the Judge, and, in case of appeal, constitute a part of the record of the cause.

ART. 598. In criminal actions for misdemeanor the Court is not required to charge the Jury, except at the request of the counsel on either side; but, when so requested, shall give or refuse such charges, with or without modification, as are asked in writing.

ART. 599. No verbal charge shall be given in any case whatever, except in cases of misdemeanor: and then only by consent of the parties.

ART. 600. When charges are asked, the Judge shall read to the Jury only such as he gives.

ART. 601. If the Jury request it, a copy of the charges given shall be taken with them to their room; but in cases where charges have been asked, and some have been given and some refused, the clerk shall copy for them such as were given: and those refused shall in no case be given to the Jury.

ART. 602. Whenever it appears by the record in any criminal action, taken to the Supreme Court upon appeal by the defendant, that the instructions given to the Jury were verbal, (except where so given by consent in a case of misdemeanor,) or that the District Judge has departed from any of the requirements of the eight preceding Articles, the judgment shall be reversed, provided it appears by the record that the defendant excepted to the order or action of the Court at the time of the trial.

ART. 603. On the trial of any criminal action, the defendant, by himself or counsel, may tender his bill of exceptions to any decision, opinion, order or charge of the Court; and the Judge shall sign such bill of exceptions, under the rules prescribed in civil suits, in order that such decision, opinion, order or charge may be revised upon appeal to the Supreme Court.

ART. 604. A statement of the facts in a criminal action shall be agreed upon by the District Attorney and the defendant or his counsel; and when they fail to agree, the same shall be made out and certified as directed in civil suits. In preparing a statement of facts, the rules in civil suits shall apply, as to the manner and form of preparing and sending up the same.

ART. 605. After a Jury has been sworn and impannelled to try any case of felony, they shall not be permitted to separate until they have returned a verdict, unless by permission of the Court, with the consent of the District Attorney and the defendant, and in charge of an officer.

ART. 606. It is the duty of the Sheriff to provide a suitable room for the deliberation of the Jury, in all criminal cases, and to supply them with such necessary food and lodging as he can obtain; but no spirituous, vinous or malt liquor, of any kind, shall be furnished them.

ART. 607. The Sheriff shall take care that no person converses with a juryman after he has been impannelled to try a criminal action, except in the presence and by permission of the Court.

ART. 608. In order to supply all the reasonable wants of

the Jury, and for the purpose of keeping them together and preventing intercourse with any other person, the Sheriff shall see that one or more bailiffs are constantly in attendance upon them.

ART. 609. No officer who is in attendance upon the Jury, shall be permitted to be in the room with them while they have a case under consideration. The officer, however, shall always remain sufficiently near to answer to any call made upon him by the Jury.

ART. 610. The Jury may take with them, on retiring to consider of their verdict, all the original papers in the cause, and any papers used as evidence.

ART. 611. The Jury in all cases shall appoint one of their body foreman, in order that their deliberations may be conducted with regularity and order.

ART. 612. When the Jury wish to communicate with the Court, they shall make their wish known to the Sheriff, who shall inform the Court thereof, and they may be brought into the court house.

ART. 613. When a Jury comes into the court house, for the purpose of communicating with the Judge, they shall, through their foreman, state their object.

ART. 614. The Jury, after having retired, may ask further instruction of the Judge touching any matter of law, which shall be given them in writing; but no charge shall be given, except upon the particular point on which it is asked.

ART. 615. If the Jury disagree as to the statement of any particular witness, they may, upon applying to the Court, have such witness again brought upon the stand, and he shall be directed by the Judge to detail his testimony in respect to the particular point of disagreement, and no other; and he shall be further instructed to make his statement in the language used upon his examination as nearly as he can.

ART. 616. If any Juror has knowledge of a fact connected with the cause on trial, it is his duty to make it known before the cause is finally submitted. Should he fail to do

this, he may come into the Court with the other Jurors, after their retirement, and shall be sworn as a witness and give his testimony.

ART. 617. In every case of felony, the defendant shall be present in the court when any such proceeding is had, as mentioned in the three next preceding Articles. His counsel shall also be called. In cases of misdemeanor, the defendant need not be personally present.

ART. 618. If, after the retirement of the Jury, any one of them become so sick as to prevent the continuance of his duty, or any accident or circumstance occur to prevent their being kept together, the Jury may be discharged.

ART. 619. The Jury may be discharged after the cause is submitted to them, when they cannot agree, and both parties consent to their discharge, or where they have been kept together for such time as to render it altogether improbable they can agree; in this latter case, the Court, in its discretion, may discharge them.

ART. 620. A final adjournment of the Court, before the Jury have agreed upon a verdict, discharges them.

ART. 621. In all the cases enumerated in Articles 618, 619 and 620, where the Jury is discharged without giving a verdict, the cause may be again tried at the same or another term.

ART. 622. The Court may, during the retirement of the Jury, proceed to any other business and adjourn from time to time, but shall be deemed open for all purposes connected with the case before the Jury.

CHAPTER V.

OF THE VERDICT.

ARTICLE 623. When the Jury have agreed upon a verdict, they shall be brought into Court by the proper officer; and if, when asked, they answer that they have agreed, the verdict shall be read aloud by the clerk; and if in proper form, and no Juror dissents therefrom, and neither party requests to have the Jury polled, the verdict shall be entered upon the minutes of the Court.

ART. 624. It is the right either of the State or of the defendant, to have the Jury polled, which is done by calling separately the name of each Juror and asking him if it is his verdict. If all, when asked, answer in the affirmative, the verdict shall be entered upon the minutes; but if any Juror answer in the negative, the Jury shall retire again to consider of their verdict.

ART. 625. In cases of felony, the defendant must be present when the verdict is read, unless he escape after the commencement of the trial of the cause; but in cases of misdemeanor it may be received and read in his absence.

ART. 626. The verdict, in every criminal action, must be general; where there are special pleas upon which the Jury are to find, they must say in their verdict that the matters alleged in such pleas are either true or untrue; where the plea is not guilty, they must find that the defendant is either "guilty" or "not guilty;" and in addition thereto they shall assess the punishment in all cases where the same is not absolutely fixed by law, to some particular penalty.

ART. 627. If the Jury find a verdict which is informal their attention shall be called to it; and, with their consent, the verdict may, under the direction of the Court, be reduced to proper form.

ART. 628. If the Jury refuse to have the verdict altered, they shall again retire to their room to deliberate, unless it manifestly appear that the verdict is intended as an acquittal; and in that case, the judgment shall be rendered accordingly, discharging the defendant.

ART. 629. In every case of acquittal, judgment shall be entered immediately upon the verdict discharging the defendant. But in case of a conviction for a felony, no judgment shall be entered on the verdict, until the expiration of the time allowed for making a motion for a new trial, or in arrest of judgment.

ART. 630. Where a prosecution is for an offence consisting of different degrees, the Jury may find the defendant not guilty of the higher degree, (naming it,) but guilty of any degree inferior to that charged in the indictment.

ART. 631. The following offences include different degrees:

1. Murder, which includes manslaughter and negligent homicide of the first and second degree.

2. Maiming, which includes disfiguring, wounding, aggravated assaults and batteries, and simple assaults and batteries.

3. Arson, which includes every malicious burning made penal by law.

4. Burglary, which includes every species of house-breaking and of theft from a house.

5. Theft, which includes all unlawful acquisitions of personal property, punishable by the Penal Code.

6. Every offence against the person includes within it assaults with intent to commit such offence, when such assault is a violation of the penal law.

7. Every offence includes within it an attempt to commit the offence, when such attempt is made penal by law.

ART. 632. Where several defendants are tried together, the Jury may convict such of the defendants as they deem guilty and acquit others.

ART. 633. Where the Jury, on the trial of several defendants, agree to a verdict as to one or more, and cannot agree as to others, they may find a verdict as to those in regard to whom they agree, and judgment shall be rendered accordingly; and the case, as to the rest, may be tried by another Jury.

ART. 634. When a verdict of guilty is rendered in any case of felony, the defendant shall remain in custody to await the judgment of the Court thereon.

ART. 635. In all cases of acquittal, the defendant shall be immediately discharged, unless he is held in custody on some other criminal accusation.

ART. 636. When the defendant is acquitted on the ground of insanity, the Jury shall so state in their verdict.

ART. 637. When a Jury has been impannelled to assess the punishment upon a plea of "guilty," they shall say in their verdict what the punishment is which they assess; but where the Jury are of opinion that a person pleading guilty is insane, they shall so report to the Court, and an issue as to that fact shall be tried before another Jury; and if upon such trial it be found that the defendant is insane, such proceedings shall be had as are directed in Chapter II, Title VIII, Part III, of this Code.

CHAPTER VI.

OF EVIDENCE IN CRIMINAL ACTIONS.

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§ I.

General Rules.

ARTICLE 638. The rules of evidence known to the common law of England, both in civil and in criminal cases, shall govern in the trial of criminal actions in this State, except where they are in conflict with the provisions of this Code or of some Statute of the State.

ART. 639. The rules of evidence prescribed by the Statute Law of this State in civil suits, shall, so far as applicable, govern also in criminal actions when not in conflict with the provisions of this Code or of the Penal Code.

ART. 640. A defendant in a criminal cause is presumed to be innocent until his guilt is established by legal evidence; and in case of reasonable doubt as to his guilt he is entitled to be acquitted.

ART. 641. Where a defendant is prosecuted for an offence which includes within it lesser degrees of crime, he may, if the evidence be sufficient, be convicted of any of the lower degrees included within the higher.

ART. 642. If a defendant, prosecuted for an offence which includes within it lesser degrees, be convicted of an offence lower than that for which he is indicted, and a new trial be granted him, or the judgment be arrested for any cause other than the want of jurisdiction, the verdict upon the first trial shall be considered an acquittal of the higher offence; but he may upon a second trial be convicted of the same offence of which he was before convicted, or any other inferior thereto.

ART. 643. The Jury in all cases are the exclusive judges of the facts proved, and of the weight to be given to the testimony, except where it is provided by law that proof of any particular fact is to be taken as either conclusive or presumptive proof of the existence of another fact, or where the law directs that a certain degree of weight is to be attached to a certain species of evidence.

§ II.

Of Persons who may Testify.

ARTICLE 644. The following persons only are incompetent to testify in criminal actions:

1. Insane persons who are in an insane condition of mind at the time when they are offered as witnesses, or who were in that condition when the events happened of which they are called to testify.

2. Children or other persons who, after being examined by the Court, appear not to possess sufficient intellect to re-

late transactions with respect to which they are interrogated, or who do not understand the obligation of an oath.

3. A slave or free person of color shall not testify, except where the prosecution is against a person who is a slave or free person of color.

ART. 645. The Court may, upon suggestion made, or of its own option, interrogate a person who is offered as a witness, for the purpose of ascertaining whether he is competent to testify, according to the rules laid down in the preceding Article, or any other Article of this Code.

ART. 646. All other persons except those enumerated in the preceding Article, whatever may be the relationship between the defendant and witness, are competent to testify, except that an Attorney at law shall not disclose a communication made to him by his client during the existence of that relationship.

ART. 647. Neither husband or wife shall, in any case, testify as to communications made by one to the other while married; nor shall they, after the marriage relation ceases, be made witnesses as to any such communication made while the marriage relation subsisted, except in a case where one or the other is prosecuted for an offence, and a declaration or communication made by the wife to the husband, or by the husband to the wife, goes to extenuate or justify an offence for which either is on trial.

ART. 648. No rule of the common law which excludes a witness on account of the existence of any particular relationship to the defendant, as of husband and wife, shall have any force, except where it is in express accordance with the provisions of this Code or of some other Statutory Law of the State. The husband and wife can in no case testify against each other, except in a criminal prosecution for an offence committed by one against the other; but they may, in all criminal prosecutions, be witnesses for each other.

ART. 649. No witness is incompetent to testify on account of his having any particular faith upon religious subjects, provided he believes in the existence of a Supreme Being.

ART. 650. The Judge of the Court trying an offence is a competent witness for either the State or defendant, and may be sworn upon the trial. But in such case it is in his discretion to order the trial to be postponed and to take place before some other Judge.

ART. 651. When it is proposed to offer the testimony of a Judge, in a cause pending before him, he is not required to testify if he declares that there is no fact within his knowledge important in the cause.

ART. 652. When the Judge of a Court is offered as a witness, the oath may be administered to him by the Clerk.

ART. 653. A conviction cannot be had upon the testimony of an accomplice, unless corroborated by other evidence tending to connect the defendant with the offence committed; and the corroboration is not sufficient if it merely shows the commission of the offence.

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§ III.

Evidence as to Particular Offences.

ARTICLE 654. No person can be convicted of treason, except upon the testimony of at least two witnesses to the same overt act, or upon his own confession in open Court.

ART. 655. Evidence shall not be admitted, in a prosecution for treason, as to an overt act not expressly charged in the indictment. Nor shall any person be convicted under an indictment for treason unless one or more overt acts are expressly charged therein.

ART. 656. In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement be not fulfilled, the Court shall instruct the Jury to render a verdict of acquittal, and they are bound by the instruction.

ART. 657. In trials for perjury, no person can be convicted, except upon the testimony of two credible witnesses, or of one credible witness, with strong corroborating circumstances.

ART. 658. In trials for forgery, the person whose name is alleged to have been forged is a competent witness.

ART. 659. In trials for forgery, it need not be proved that the defendant committed the act with intent to defraud any particular person. It shall be sufficient to prove that the forgery was in its nature calculated to injure or defraud any of the sovereignties, bodies corporate or politic, officers or persons named in Article 439 of the Penal Code in defining forgery.

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§ IV.

Of Dying Declarations and of the Confessions of the Defendant.

ARTICLE 660. The dying declarations of a deceased person may be offered in evidence either for or against a defendant charged with the homicide, under the restrictions hereafter provided. To render the declarations of the deceased competent evidence, it must be satisfactorily proved:

1. That at the time of making such declarations he was conscious of approaching death, and believed there was no hope of recovering.

2. That the declaration was voluntarily made, and not through the persuasion of any person.

3. That such declaration was not made in answer to interrogatories calculated to lead the deceased to make any particular statement.

4. That he was of sane mind at the time of making the declaration.

ART. 661. The confession of a defendant may be used in

evidence against him, if it appear that the same was freely made without compulsion or persuasion, under the rules hereafter prescribed.

ART. 662. The confession shall not be used, if, at the time it was made, the defendant was in jail or other place of confinement, nor while he is in custody of an officer, unless such confession be made in the voluntary statement of the accused, taken before an examining Court in accordance with law, or be made voluntarily after having been first cautioned that it may be used against him.

ART. 663. The confession of a slave shall never be used in evidence against him, when made after whipping or other chastisement has been inflicted or threatened, on account of the offence of which he is accused.

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§ V.

Miscellaneous Provisions.

ARTICLE 664. When part of an act, declaration or conversation, or writing, is given in evidence by one party, the whole on the same subject may be enquired into by the other, as, when a letter is read, all other letters on the same subject, between the same parties, may be given. And when a detailed act, declaration, conversation or writing is given in evidence, any other act, declaration or writing, which is necessary to make it fully understood, or to explain the same, may also be given in evidence.

ART. 665. When an instrument is partly written and partly printed, the written shall control the printed portion, when the two are inconsistent.

ART. 666. When a subscribing witness denies or does not recollect the execution of an instrument to which his name appears, its execution may be proved by other evidence.

ART. 667. It is competent, in every case, to give evidence

of handwriting by comparison, made by experts or by the Jury; but proof by comparison only shall not be sufficient to establish the handwriting of a witness who denies his signature.

ART. 668. The rule that a party introducing a witness shall not attack his testimony is so far modified as that any party, when facts stated by the witness are injurious to his cause, may attack his testimony in any other manner, except by proving the bad character of the witness.

TITLE VI.

OF PROCEEDINGS AFTER VERDICT.

CHAPTER I.

OF NEW TRIALS.

ARTICLE 669. A new trial is the rehearing of a criminal action, after verdict, before another Jury.

ART. 670. A new trial can in no case be granted where the verdict has been rendered for the defendant.

ART. 671. A new trial must be applied for within two days after the verdict is returned; but for good cause shown, the Court, in cases of felony, may allow the application to be made at any time before the adjournment of the term at which the verdict was found. When a Court adjourns before the expiration of two days from the return of verdict, the motion shall be made before the adjournment.

ART. 672. New trials, in cases of felony, shall be granted for the following causes, and for no other :

1. Where the defendant has been tried in his absence or has been denied counsel.

2. Where the Court has misdirected the Jury as to the law, or has committed any other material error calculated to injure the rights of the defendant.

3. Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the Jurors.

4. Where a Juror has received a bribe to convict, or has been guilty of any other corrupt conduct.

5. Where any material witness of the defendant has, by force, threats or fraud, been prevented from attending the Court, or where any written evidence, tending to establish the innocence of the defendant, has been intentionally destroyed or removed, so that it could not be produced upon the trial.

6. Where new testimony material to the defendant has been discovered since the trial. A motion for a new trial based on this ground shall be governed by the same rules as those which regulate civil suits.

7. Where the Jury, after having retired to deliberate upon a case, have received other testimony ; or where a Juror has conversed with any person in regard to the case ; or where any Juror, at any time during the trial or after retiring, may have become so intoxicated as to render it probable his verdict was influenced thereby. But the mere drinking of liquor by a Juror shall not be sufficient ground for granting a new trial.

8. Where, from the misconduct of the Jury, the Court is of opinion that the defendant has not received a fair and impartial trial ; and it shall be competent to prove such misconduct by the voluntary affidavit of a Juror; and a verdict may, in like manner, in such cases, be sustained by such affidavit.

9. Where the verdict is contrary to law and evidence. A verdict is not contrary to the law and the evidence, within the meaning of this provision, where the defendant is found guilty of an offence of inferior grade to, but of the same nature as, the offence proved.

ART. 673. If a new trial be refused, a statement of facts may be drawn up and certified, and placed in the record as in civil suits. Where the defendant has failed to move for a new trial, he is nevertheless entitled, if he appeals, to have a statement of the facts certified and sent up with the record.

ART. 674. The effect of a new trial is to place the cause in the same position in which it was before any trial had taken place. The former verdict shall be regarded as no presumption of guilt, nor shall it be alluded to in the argument.

CHAPTER II.

ARREST OF JUDGMENT.

ARTICLE 675. A motion in arrest of judgment is a suggestion to the Court on the part of the defendant that judgment cannot be legally rendered upon the verdict against him. The motion may be made orally or in writing; and the record must show the grounds of the motion.

ART. 676. The motion must be made within two days after the verdict is returned; or if the Court adjourn before the expiration of two days from such return of verdict, then it may be made at any time before judgment is entered.

ART. 677. The Court may, for good cause shown, hear a motion in arrest of judgment at any time.

ART. 678. A motion in arrest of judgment shall be granted upon any ground which would be good upon exception to an indictment or information, for any substantial defect therein.

ART. 679. No judgment shall be arrested for want of form.

ART. 680. The effect of arresting a judgment is to place the defendant in the same position he was before the indictment or information was presented. And if the Court be satisfied from the evidence, that he may be convicted upon a proper indictment or information, he shall be remanded into custody, or bailed, as the case may require.

ART. 681. Where the Court is not satisfied from the proof that upon a proper indictment or information the defendant may be convicted, he shall be discharged.

CHAPTER III.

JUDGMENT AND ITS INCIDENTS.

§ I.

Judgment in Cases of Felony.

ARTICLE 682. If a new trial is not granted, nor the judgment arrested, the judgment of the Court, in cases of felony, shall be entered, and sentence pronounced in presence of the defendant, at any time after the expiration of the time allowed for making the motion for a new trial, or the motion in arrest of judgment.

ART. 683. In cases of felony, where an appeal is taken, sentence shall not be pronounced, but shall be suspended until the decision of the Supreme Court has been received.

ART. 684. In cases where a verdict of conviction takes place so late in the term of the Court as not to allow the time given by Articles 671 and 676 for making a motion for a new trial, or in arrest of judgment, the judgment may be entered and sentence pronounced at any time before the Court finally adjourns; provided that in every case at least six hours shall be allowed for making either of these motions.

ART. 685. If, at the time a verdict is returned into Court, there be less than six hours remaining before the Court by law must adjourn, it shall be lawful and shall be the duty of the District Judge, to sit during the whole of Saturday night and Sunday, for the purpose of enabling the defendant to move for a new trial or in arrest of judgment, and prepare his cause for the Supreme Court. This Article shall not require the District Judge to sit longer than six hours after verdict rendered, if a motion for a new trial, or in arrest of judgment, shall not have been filed.

ART. 686. Where, from any cause whatever, a verdict of conviction has been returned, and there is a failure to enter judgment and pronounce sentence during the term, the judgment may be entered and sentence pronounced at the next succeeding term of the Court, unless a new trial has been granted, or the judgment arrested, or an appeal has been taken.

ART. 687. Before pronouncing sentence in a case of felony, the defendant shall be asked whether he has any thing to say why judgment should not be rendered and sentence pronounced against him.

ART. 688. The only reasons which can be shown on account of which sentence cannot be passed, are:

1. That the defendant has received a pardon from the proper authority; on the presentation of which, legally authenticated, he shall be discharged.

2. That the defendant is insane; and if sufficient proof be shown to satisfy the Court that the allegation is well founded, no sentence shall be pronounced. And where there is sufficient time left, a Jury may be impannelled to try the issue. Where sufficient time does not remain, the Court shall order the defendant to be confined safely until the next term of the

Court, and shall then cause a Jury to be impannelled to try such issue.

3. Where there has not been a motion for a new trial, or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions, and either or both motions may be immediately entered and disposed of, although more than two days may have elapsed since the rendition of the verdict.

4. When a person who has been convicted of félony escapes between verdict and judgment, or between the time of rendering the judgment in the District Court and sentence thereon, after affirmance of the same in the Supreme Court, and an individual supposed to be the same has been arrested, he may, before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a Jury as to his identity.

ART. 689. Where the sentence of death is pronounced against a convict, a time shall be set for the execution of the same not earlier than thirty days from the date of the sentence.

ART. 690. The Clerk of the District Court shall issue a warrant for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offence and the judgment of the Court, the time fixed for its execution, and the manner in which it is to be executed.

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§ II.

Judgment in Cases of Misdemeanor.

ARTICLE 691. The judgment in cases of misdemeanor may be rendered in the absence of the defendant.

ART. 692. When the defendant has not given bail, and is not in custody, the District Attorney may, in case a pecuniary fine has been imposed, have a capias issued, and the Sheriff shall execute the same by placing the defendant in Jail until

the fine is paid, from which confinement, however, he may be released after remaining in Jail the length of time prescribed in Article 696, upon making oath before the Sheriff that he is unable to pay.

ART. 693. When the punishment assessed by the Jury is a pecuniary fine only, the defendant, if in custody, may be discharged therefrom:

1. Upon the payment of the fine and costs.

2. Upon giving security, in open Court, for the payment of the fine and costs on or before the next term of the Court. In such case the surety shall acknowledge himself bound for the amount of the fine and costs, of which an entry shall be made on the minutes of the Court, and shall have the effect of a judgment against such surety, and execution may accordingly be issued against both principal and surety, and be collected as in civil suits.

ART. 694. If the defendant, being in custody, refuse to give security, he may be committed to Jail, to remain until the fine and costs are paid, unless he make oath that he is unable to pay the fine, in which case he shall be committed to Jail for a term not exceeding ten days; and if the fine exceeds twenty dollars, then one additional day for every three dollars over twenty to which the fine may amount.

ART. 695. When the defendant is not in custody, but has given bail, the District Attorney may, in any case of misdemeanor, take a forfeiture of his recognizance or bail bond, or he may, in case of a mere pecuniary fine, have execution issued against the defendant, to be collected and returned as in civil actions.

ART. 696. Where the punishment imposed, or any part thereof, is imprisonment, and the defendant is not in custody, a capias may be issued to take the defendant, and the Sheriff shall execute the same by placing the defendant in Jail, to remain the length of time fixed by the judgment, and execution shall issue to collect the costs and the fine, if any has been imposed, in addition to the imprisonment.

ART. 697. Where a defendant makes his escape from custody, either before or after verdict, a capias shall be issued for his arrest.

CHAPTER IV.

EXECUTION OF JUDGMENTS.

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§ I.

Collection of Pecuniary Fines.

ARTICLE 698. Where a defendant is committed to the custody of the Sheriff, or taken under a capias, for the purpose of enforcing the collection of a pecuniary fine, it is the duty of the Sheriff to place him in Jail.

ART. 699. A copy of the judgment of the Court imposing the fine, certified to by the Clerk of the District Court, is sufficient authority for the Sheriff to commit a defendant to the Jail of his county, in cases where, by the judgment, it is directed that he be committed until the fine and costs be paid.

ART. 700. Where it is directed in the judgment of the Court that a capias issue to enforce the collection of a fine, the Clerk of the District Court shall issue the writ to the Sheriff, reciting the existence and character of the judgment, and commanding the Sheriff to take the body of the defendant, and hold him in custody until the fine and costs are paid. This writ is sufficient authority to justify the commitment of the defendant to Jail.

ART. 701. In cases where an execution is ordered to be issued in a criminal cause, to enforce a judgment, it is the duty of the Sheriff to collect the same as in civil suits.

ART. 702. All recognizances, bail bonds and undertakings of any kind, whereby a party becomes bound to pay money to the State, shall be deemed payable in gold or silver; and all fines and forfeitures of a pecuniary character shall be collected in that currency only.

ART. 703. The Sheriff shall make a written report, under oath, of all money collected by him, under execution or other

process, in criminal actions, and file the same at each term of the District Court.

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§ II.

Enforcing the Judgment in Misdemeanors where the Penalty is Imprisonment, and in Felonies less than Capital.

ARTICLE 704. When, by the judgment of the Court, a defendant is to be imprisoned in Jail, as the penalty, or a part of the penalty of the offence, a copy of the judgment is sufficient to authorize the Sheriff to execute the same, by such imprisonment of the defendant.

ART. 705. When a capias is directed to be issued for the apprehension and commitment of a person convicted of a misdemeanor, the penalty of which is imprisonment in Jail, the writ shall recite the judgment, and command the Sheriff to place the defendant in Jail, to remain the length of time therein fixed, and this writ shall be sufficient to authorize the Sheriff to enforce such judgment.

ART. 706. When the defendant has been sentenced to the Penitentiary, a certified copy of the judgment shall be sufficient to authorize the Sheriff to convey such convict and deliver him to the proper officer of the same.

ART. 707. Prisoners shall be conveyed to the Penitentiary in the manner, and under the rules prescribed in the Act of March 13, 1848, entitled "An Act to establish a State Penitentiary," as the same is amended and set forth in the Penal Code.

§ III.

Execution of the Penalty of Death.

ARTICLE 708. When sentence of death is to be executed, a warrant shall be issued by the Clerk of the District Court, directed to the Sheriff of the proper county, which may be carried into effect, at any time after eleven o'clock and before sunset, on the day stated in such warrant.

ART. 709. The sentence of death shall be executed by hanging the convict by the neck until he is dead.

ART. 710. Where there is a Jail in the county, and it is so constructed that a gallows can be erected therein, the execution of the sentence of death shall take place within the walls of the Jail.

ART. 711. Where the sentence of death is executed within the walls of the County Jail, the Sheriff shall notify any number of physicians or surgeons, not exceeding six, any number of Justices of the Peace of his county, not exceeding four, and any number of freeholders in the county, not exceeding six, any or all of whom may be present, together with such deputies of the Sheriff as he may require to be in attendance when the penalty of death is executed.

ART. 712. The Sheriff shall comply with any reasonable request of the convict; and where the execution takes place within the walls of the County Jail, shall permit such persons to be present (not exceeding five) as he may name.

ART. 713. No torture or ill treatment, or unnecessary pain shall be inflicted upon a prisoner to be executed under sentence of the law.

ART. 714. The County Court of each county shall so provide as that the Jails of their respective counties may be fitted for the execution of the penalty of death, in the manner herein provided.

ART. 715. The Sheriff may, when he supposes there will

be a necessity, order such number of citizens of his county, or any military company, to aid in preventing the rescue of a prisoner, or to prevent persons not authorized to be present from intruding themselves within the place of execution.

ART. 716. The body of a convict shall be buried at the expense of the county, unless demanded by his relatives or friends, in which case it shall be given to them, and shall never, unless by consent of the convict himself, before execution, be delivered to any person for dissection.

ART. 717. The Sheriff shall immediately return the warrant, stating therein:

1. The fact, time, place and mode of execution.

2. If the execution do not take place within the Jail, the return shall state that there is no Jail, or that it is not so constructed that a gallows can be erected therein.

3. If the execution take place within the Jail, the return shall state the names of the physicians, Justices of the Peace, and freeholders notified to be present; and the names of the persons present, if any, by request of the convict.

4. If the execution do not take place within the Jail, the return shall state the names of five freeholders of the county who were present.

5. That the body of the convict was buried, or delivered to his relatives or friends, or to a physician or surgeon, by consent of the convict.

TITLE VII.

OF APPEALS.

ARTICLE 718. An appeal may be taken from the District to the Supreme Court by the State, in the following cases, and in no others:

1. When the District Court sustains an exception of the defendant to the indictment or information.

2. Where the District Court sustains a motion of the defendant in arrest of judgment.

ART. 719. An appeal may be taken by the defendant in every case where judgment of conviction has been rendered against him in the District Court, or where such a Court, or a Judge thereof, or a Judge of the Supreme Court, has decided against an application of the defendant under habeas corpus.

ART. 720. Where the State appeals no security can be required.

ART. 721. Where the defendant appeals in any case of felony, he shall be committed to Jail until the decision of the Supreme Court can be made ; and if the Jail of the county is unsafe, or there be no Jail, the Judge of the District Court may, either in term time or in vacation, order the prisoner to be committed to the Jail of the nearest county in his district which is safe.

ART. 722. When the defendant appeals in any case of misdemeanor, he shall be committed to Jail, unless he enter into recognizance to appear before the District Court, to abide the judgment of the Supreme Court.

ART. 723. The defendant shall also be required, where the State appeals, to enter into recognizance to appear before the District Court to answer the criminal accusation against him, in case the judgment of the District Court be reversed, but when the defendant makes oath that he is unable to give bail, he shall be discharged upon his own recognizance, which may be forfeited and enforced as directed in Article 451, with respect to witnesses.

ART. 724. An appeal on behalf of the State must be taken so soon as the order is made which is appealed from.

ART. 725. An appeal may be taken by the defendant at any time during the term of the Court at which the conviction is had.

ART. 726. An appeal is taken by giving notice thereof in open Court, and having the same entered of record.

ART. 727. The effect of an appeal is to suspend and arrest all further proceedings, until the judgment of the Supreme Court has been received by the District Court.

ART. 728. Where the defendant fails to appeal until after sentence has been pronounced, the appeal shall nevertheless be allowed if demanded, and has the effect of superceding the execution of the sentence and all other proceedings, as fully as if taken at the proper time.

ART. 729. It is the duty of the Clerk of the District Court to prepare, immediately after the adjournment of each term of Court a transcript in every case where an appeal is taken; which transcript shall contain all the proceedings had in the case. The transcripts in criminal cases shall be made out before those in civil actions decided at the same term.

ART. 730. The transcript of the record in cases of misdemeanor must be delivered to the party appealing, or his counsel, when the defendant appeals, or to the District Attorney, or any counsel associated with him, when the State appeals. But if not applied for before the twentieth day before the commencement of the term of the Supreme Court to which the appeal is returnable, the Clerk shall transmit the same by mail, paying the postage thereon, to the Clerk of the Supreme Court.

ART. 731. Transcripts of record in all cases of felony shall, so soon as prepared, be sent by mail, addressed to the Clerk of the Supreme Court, at the place where the session of the Supreme Court is held, to which the appeal is returnable. The District Clerk shall deposit each transcript so addressed and securely enveloped, and shall pay the postage upon the same; and the amount paid shall be taxed as a part of the costs in each case.

ART. 732. The District Clerk shall immediately after the adjournment of the Court, at which appeals in criminal actions may have been taken, make out a certificate under his seal of office, exhibiting a list of all such causes which have been de-

cided, and in which either the State or defendant has appealed. This certificate shall show the style of the cause upon the docket—the offence of which the defendant stands accused—the day on which judgment was rendered, and the day on which the appeal was taken—which certified list he shall transmit, post paid, to the Clerk of the Supreme Court at the proper place.

ART. 733. The Clerk of the Supreme Court shall file the certificate provided for in the preceding Article, and notify the Attorney General that the same has been received.

ART. 734. When it appears by such certificate that an appeal has been taken by the defendant in a criminal action for misdemeanor, and the transcript is not filed within the time required by law for filing transcripts in civil actions, such cause may be entered upon the docket on motion of the Attorney General, and the judgment of the District Court shall be affirmed.

ART. 735. When it appears by the certificate of the Clerk of the District Court, that an appeal has been taken by the defendant in any criminal action for felony, and no transcript thereof is filed in the Supreme Court within the time required by law, the Clerk of the Supreme Court shall notify the Attorney General of the same, and shall also immediately, by mail, inform the Clerk of the proper District Court that such transcript has not been received.

ART. 736. No judgment of the District Court in a case of felony shall be affirmed unless the record of the cause is before the Supreme Court, and it is the duty of the Clerk of the Supreme Court, to notify the counsel of the accused, through the mail, if he knows the residence of such counsel, whenever there has been a failure to receive the transcript of record in any case of felony.

ART. 737. The Clerk of the District Court, when informed that a transcript has not been received by the Clerk of the Supreme Court, shall immediately prepare and transmit another, as directed in Article 731.

ART. 738. When an appeal is taken by the State, and the transcript of the record is not filed in the Supreme Court

within the time limited for filing transcripts in civil actions, the defendant's counsel may suggest the facts to the Court, and upon exhibiting the certificate of the District Clerk that such appeal was taken by the State, the cause shall be docketed and the judgment of the District Court affirmed, unless good cause be shown why the transcript has not been filed.

ART. 739. The Clerk of the Supreme Court shall receive, file and docket appeals in criminal actions, under the same rules which govern appeals in civil actions, except that it shall be in the discretion of the Court, in cases of felony, to permit a transcript to be filed at any time during the term to which an appeal is taken.

ART. 740. The defendant to a criminal action need not be personally present upon the hearing of his cause in the Supreme Court, but he may appear in person in cases where by law he is not committed to jail upon appeal.

ART. 741. The Court shall hear and determine appeals in criminal actions at the earliest time it may be done with due regard to the rights of parties and a proper administration of justice.

ART. 742. The judgment in a criminal action, upon appeal, may be wholly reversed and dismissed when brought up by the defendant, or affirmed and dismissed when brought up by the State; the judgment may be reformed and corrected, or the cause may be remanded for further proceedings in the District Court, as the law and the nature of the case may require.

ART. 743. As soon as the judgment of the Supreme Court is rendered, the Clerk shall make out the proper certificate of the proceedings had and judgment rendered, and transmit the same, by mail, to the Clerk of the District Court, or deliver the mandate to the counsel of the defendant when the decision is favorable to the defendant, if requested to do so, unless he be instructed by the Court to withhold the mandate to any particular time.

ART. 744. The Supreme Court may revise the judgment in a criminal action, as well upon the law as upon the facts; but when a cause is reversed for the reason that the verdict

is contrary to the weight of evidence, the same shall in all cases be remanded for a new trial.

ART. 745. The Supreme Court may make rules of procedure, as to the hearing of criminal actions, upon appeal; but in every case at least two counsel for the defendant shall be heard, if they desire it, either by brief or by oral or written argument, or by both, as such counsel shall deem proper.

ART. 746. When the certificate of the judgment and proceedings in the Supreme Court shall be received by the District Clerk, he shall file the same with the original papers of the cause.

ART. 747. In cases where the judgment of the District Court is affirmed upon an appeal by the defendant, if the mandate be received during the session of the District Court, that Court shall proceed to pronounce sentence, in cases of felony, during the term at which the mandate is received.

ART. 748. If the mandate be received in vacation, and the judgment in a case of felony has been affirmed, sentence shall be pronounced during the term of the Court next succeeding the time at which the same was received.

ART. 749. In cases of misdemeanor, where no formal sentence is to be pronounced, no proceedings need be had after filing the mandate in the District Court, but the cause shall stand as it would have stood in case no appeal had been taken, and the recognizance of the defendant may be forfeited, or a capias issued to enforce the punishment adjudged, whether of fine or imprisonment, or both, in the same manner as if no appeal had been taken.

ART. 750. Where the Supreme Court awards a new trial to the defendant, the cause shall stand as it would have stood in case the new trial had been granted by the District Court.

ART. 751. Where the defendant's motion in arrest of judgment was overruled, and it is decided on appeal that the same ought to have been sustained, the cause shall stand as if the motion had been sustained in the District Court, unless the Supreme Court in its judgment direct the cause to be dismissed and the defendant wholly discharged.

ART. 752. If the appeal was taken by the State, from a judgment of the District Court, sustaining an exception to the indictment or information, or sustaining a motion in arrest of judgment, and the judgment is reversed, the cause shall stand as if the exception or the motion in arrest had been overruled by the District Court.

ART. 753. Where the Supreme Court reverses a judgment of the District Court, and directs the cause to be dismissed, the defendant, if in custody, must be discharged; and the Clerk of the Supreme Court shall transmit to the officer having custody of the defendant an order to that effect.

ART. 754. When the defendant appeals from the judgment rendered on the hearing of an application under habeas corpus, a transcript of the proceedings in the cause shall be made out and certified to, together with all the testimony offered, and shall be sent up to the Supreme Court for revision. This transcript, when the proceeding takes place before the District Court in session, shall be prepared and certified by the Clerk thereof, but when had before a Judge of the Supreme Court or of the District Court not in session, the transcript may be prepared by any person under the direction of the Judge and certified by such Judge.

ART. 755. The Supreme Court shall hear the appeal upon the facts and law arising upon the record, and shall enter such judgment and make such orders as the law and the nature of the case may require.

ART. 756. The opinion of a District or Supreme Judge shall not be revised as to any incidental question which may have arisen on the hearing of the application for habeas corpus. The only design of the appeal being to do substantial justice to the party appealing.

ART. 757. Cases of habeas corpus taken to the Supreme Court by appeal shall be heard at the earliest practicable time.

ART. 758. The Supreme Court may make such order relative to the costs in cases of habeas corpus as may seem right, allowing costs and fixing the amount. or allowing no costs at all.

ART. 759. The judgment of the Supreme Court, in appeals under habeas corpus, shall be final and conclusive, and no further application in the same case can be made for the writ. The judgment of the Supreme Court shall be certified by the Clerk thereof to the officer holding the defendant in custody, or, when he is held by any person other than an officer, to the Sheriff of the proper county.

ART. 760. If an officer, holding a person in custody, fails to obey the mandate of the Supreme Court, he is guilty of an offence, and punishable according to the provisions of the Penal Code.

ART. 761. If the appellant, in a case of habeas corpus, be detained by any person other than an officer, the Sheriff shall, upon receiving the mandate of the Supreme Court, immediately cause the person so held to be discharged, and the mandate shall be sufficient authority therefor.

ART. 762. The defendant need not be personally present upon the hearing of an appeal in cases of habeas corpus.

ART. 763. When, by the judgment of the Supreme Court, upon appeal in cases of habeas corpus, the applicant for relief is ordered to give bail, such judgment shall be certified to the officer holding him in custody; and if he be the Sheriff, the bail bond may be executed before him; if any other officer, he shall take the person detained before some Magistrate, who may receive a bail bond, and shall file the same in the District Court of the proper county, and such bond shall have the same force and effect as a recognizance, and may be forfeited and enforced in the same manner.

TITLE VIII.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I.

DEPOSITION OF WITNESSES.

§ I.

When taken.

ARTICLE 764. Whenever an examination takes place in a criminal action before a Magistrate, the defendant may have the deposition of any witness taken by any officer or officers hereafter named in this Chapter; but the State or person prosecuting shall have the right to cross-examine the witnesses, and the defendant shall not use the deposition for any purpose unless he first consent that the entire evidence or statement of the witness may be used against him by the State, on the trial of the case.

ART. 765. Depositions of witnesses may also, at the request of the defendant, be taken in the following cases:

1. When the witness resides out of the State.
2. When the witness is aged or infirm.

§ II.

Persons authorized to take Depositions, and the manner of taking and returning them.

ARTICLE 766. Depositions of witnesses within the State may be taken by a Supreme or District Judge, or before any two or more of the following officers: the Chief Justice of a county, Notary Public, Clerk of the District Court and Clerk of the County Court.

ART. 767. Depositions of a witness residing out of the State may be taken before the Judge or Chancellor of a Superior Court of law or equity, or before a Commissioner of deeds and depositions for this State, who resides within the State where the deposition is to be taken.

ART. 768. The deposition of a non-resident witness, who may be temporarily within the State, may be taken under the same rules which apply to the taking of depositions of other witnesses in the State.

ART. 769. The rules prescribed in civil cases for taking the deposition of witnesses, shall, as to the manner and form of taking and returning the same, govern in criminal actions, when not in conflict with the requirements of this Code.

ART. 770. The same rules of procedure as to objections to depositions shall govern in criminal actions which are prescribed in civil actions, when not in conflict with this Code.

ART. 771. When the defendant desires to take the deposition of a witness, at any other time than before the examining Court, he shall, by himself or counsel, file with the Clerk of the District Court a statement on oath, setting forth the facts necessary to constitute a good reason for taking the same, and in addition thereto state in his affidavit that he has no other witness whose attendance on the trial can be procured, by whom he can prove the facts he desires to establish by the deposition.

ART. 772. In cases arising under the preceding Article, written interrogatories shall be filed with the Clerk of the District Court, and a copy of the same served on the District Attorney of the proper District, the length of time required for service of interrogatories in civil actions.

ART. 773. In every case where depositions are taken, under commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission; or, if they cannot certify to the identity of the witness, there shall be an affidavit of some person attached to the deposition proving the identity, and the officer or officers shall certify that the person making the affidavit is known to them and is worthy of credit.

ART. 774. In cases where it is required that two officers shall act in executing a commission to take depositions, the official seal and signature of each shall be attached to the certificate authenticating the deposition.

ART. 775. The deposition of a witness taken before an examining Court may be taken without interrogatories. But whenever a deposition is so taken it shall be done by the proper officer or officers, and there shall be allowed both to the State and the defendant full liberty of cross-examination.

ART. 776. The depositions of witnesses taken before an examining Court may be taken without a commission; and if such examining Court be held by a Supreme or District Judge, he shall, upon request, proceed to take the depositions of the witnesses.

ART. 777. Where any of the officers, other than a Supreme or District Judge, are called upon to take a deposition before an examining Court, it is their duty to attend and take the same.

ART. 778. A deposition taken in an examining Court shall be sealed up and delivered by the officer or officers, or one of them, to the Clerk of the District Court of the county having jurisdiction to try the offence; in all other cases the return of depositions may be made as provided for depositions in civil actions.

§ III.

Of reading Depositions in Criminal Actions.

ARTICLE 779. Depositions taken in criminal actions shall not be read, unless oath be made that the witness resides out of the State; or, that since his deposition was taken, the witness has died; or that he has removed beyond the limits of the State; or that he has been prevented from attending the Court through the act or agency of the defendant; or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony.

ART. 780. When the deposition is sought to be used by the State the oath prescribed in the preceding Article may be made by the District Attorney or any other credible person; and when sought to be used by the defendant the oath shall be made by him in person.

CHAPTER II.

OF INQUIRY AS TO THE INSANITY OF THE DEFENDANT.

ARTICLE 781. If it be made known to the Court at any time after conviction, or if the Court has good reason to believe that a defendant is insane, a Jury shall be impannelled to try the issue.

ART. 782. Information to the Court as to the insanity of a defendant may be given by the written affidavit of any respectable person, setting forth that there is good reason to believe that the defendant has become insane.

ART. 783. The Court shall direct the Sheriff to summon twelve men, qualified Jurors, for the purpose of trying the question of insanity.

ART. 784. No special formality is necessary in conducting the proceedings authorized by this Chapter. The Court shall see that the inquiry is conducted in such manner as to lead to a satisfactory conclusion.

ART. 785. In trials of an issue as to the insanity of a defendant each party shall be entitled to six peremptory challenges, and may challenge also for the same causes which are made good ground of challenge on the trial of criminal actions.

ART. 786. The counsel for the defendant has the right to open and conclude the argument upon the trial of an issue as to insanity.

ART. 787. If the defendant has no counsel, the Court shall appoint counsel to conduct the trial for him.

ART. 788. When an inquiry as to the insanity of a defendant takes place, before judgment is rendered, and it is found that the defendant is insane, the judgment shall be suspended until he becomes sane.

ART. 789. Where an inquiry as to insanity has taken place after judgment, and the defendant is found to be insane, the execution of the judgment shall be suspended until he becomes sane.

ART. 790. When, upon the trial of an issue as to insanity, it is found that the defendant is sane, judgment shall be rendered upon the verdict of conviction, as if no such issue had been tried.

ART. 791. When the inquiry takes place after judgment, and the defendant is found to be sane, the execution of the judgment shall follow as if no such inquiry had been made.

ART. 792. It is the duty of each County Court to make provision for the safe keeping and proper treatment of per-

sons who become insane, until a lunatic asylum shall be provided by the State.

ART. 793. Whenever it is found that a defendant is insane, upon inquiry, as directed in this Chapter, the Court shall make an order that he be placed in the charge of the County Court until a lunatic asylum shall be provided by the State.

CHAPTER III.

DISPOSITION OF PROPERTY STOLEN.

ARTICLE 794. When any property alleged to have been stolen comes into the custody of an officer, he must hold it subject to the order of the proper Court or Magistrate.

ART. 795. Upon the trial of any criminal action for theft, or for any other illegal acquisition of property, which is by law a penal offence, the Court before whom the trial takes place shall order the property to be restored to the person appearing by the proof to be the owner of the same.

ART. 796. When an officer seizes property alleged to have been stolen, it is his duty immediately to file a schedule of the same and its value, certifying that the property has been seized by him, and the reason therefor.

ART. 797. Upon examination of a criminal accusation before a Magistrate, if it is proved to the satisfaction of such Magistrate that any person is the true owner of property alleged to have been stolen, and which is in the possession of a peace officer, he may, by written order, direct the property to be restored to such owner.

ART. 798. If the Magistrate have any doubt as to the ownership of the property, he may require of the person claiming to be the owner a bond with security for the re-delivery of the same, in case the property should thereafter be shown not to belong to such claimant, or he may, in his discretion, direct the property to be retained by the Sheriff until further order respecting the possession thereof.

ART. 799. A bond, under the provisions of the preceding Article, shall be taken payable to the Sheriff from whose custody it is received.

ART. 800. If stolen property be not claimed within six months from the conviction of a defendant accused of the theft, the same shall be by the Sheriff sold, for cash, after advertising for ten days, and the proceeds paid into the treasury of the county where the defendant was convicted.

ART. 801. Advertisement, as provided for in the preceding Article, shall be made by posting up a notice on the Courthouse door of the proper county; and the sale shall take place at the county seat and before the Courthouse door.

ART. 802. If the property stolen consist of money, the same shall be paid into the county treasury, if not claimed by the proper owner within six months.

ART. 803. The real owner of the property or money disposed of, as provided in Article 800 and 802, shall have twelve months to present his claim to the County Court to which the money held or realized from the sale has been paid, and if his claim be denied he may sue the County Treasurer, and upon sufficient proof recover the same.

ART. 804. If the property stolen be a written instrument of any description, and is not claimed before the trial of the cause, the same shall be filed by the Clerk of the District Court, subject to the claim of any person who may afterwards establish his right thereto, and any person claiming such written instrument shall, by advertisement in a newspaper published in the proper county, or in a newspaper nearest the county seat of such county, for eight successive weeks, give notice of his claim, and may afterwards, at any succeeding term of the Court, establish by proof his right thereto.

ART. 805. All the provisions of this Chapter relating to stolen property apply as well to property acquired in any manner which makes the acquisition a penal offence.

CHAPTER IV.

APPROPRIATION OF FINES AND MONEYS COLLECTED UPON RECOGNIZANCES, BAIL BONDS AND OTHER LIKE UNDERTAKINGS.

ARTICLE 806. Every officer charged with the collection of money, upon forfeited recognizances, bail bonds, and other obligations recovered upon in the name of the State, under the provisions of this Code, shall pay over all money collected to the County Treasurer of the proper county. And all fines collected by virtue of any process issued to the Sheriff from any Court having jurisdiction in criminal actions, shall in like manner be paid over when collected.

ART. 807. All fines and forfeitures of money upon any proceeding in criminal cases, including fines against the defendant and against defaulting witnesses, money recovered upon recognizances, bail bonds, and all other undertakings in a criminal case, whether of a defendant or of a witness, or the sureties of either, and all fines against defaulting Jurors, and for contempts of Court shall be paid into the County Treasury, and shall constitute a fund for the payment, first, of expenses incurred by the county in the keeping of prisoners, and the payment of the expenses of Juries in cases of felony, and, secondly, for the payment of Jurors in attendance upon the Court at each term.

ART. 808. The District Attorney shall be entitled in each case to a fee of five per cent. upon the whole amount of any

fine, forfeiture or other money collected under the provisions of this Chapter. If there be an Attorney appointed by the County Court to represent the interest of any county in judicial proceedings, he shall be also entitled to a fee of five per cent. for assisting in the collection of money so accruing to the county; and the Sheriff shall retain five per cent. as compensation for his own services in collecting the same, which several amounts shall be deducted from the amount collected, and the balance paid over to the County Treasurer as before directed.

CHAPTER V.

OF REMITTING FINES AND FORFEITURES, COMMUTATION OF PUNISHMENTS AND REPRIEVES.

ARTICLE 809. After conviction, the Governor of the State shall have power, without restriction, to remit fines and forfeitures of a pecuniary character; but he shall report to the Legislature all cases in which he has remitted such penalties, with his reasons for the same.

ART. 810. After conviction, the Governor shall have power to remit forfeitures of lands, or of rights and privileges, or forfeitures of any character whatever known to the laws of the State, whenever he shall be memorialized by the Legislature in a joint resolution, setting forth the forfeiture which they may wish remitted.

ART. 811. The Governor shall have authority to commute the punishment in every case of capital felony, by changing the penalty of death into that of imprisonment for life, or for a term of years, either with or without hard labor, which may be done by his warrant to the proper Sheriff, commanding him not to execute the penalty of death, and directing him

to convey the prisoner to the Penitentiary, stating therein the time for which and the manner in which the defendant is to be confined, which warrant shall be sufficient authority to the Sheriff to deliver, and to the proper officers of the Penitentiary to receive the convict.

ART. 812. The Governor may also reprieve and delay the execution of the penalty of death to any day fixed by him in a warrant to the Sheriff.

PART IV.

OF PROCEEDINGS IN INFERIOR TRIBUNALS, AND OF CERTAIN SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

TITLE I.

OF PROCEEDINGS IN JUSTICES AND MAYORS COURTS.

CHAPTER I.

General Provisions.

ARTICLE 813. The Mayor, or the officer by law exercising the duties usually incumbent upon the Mayors of incorporated towns and cities, and Recorders thereof, shall exercise within the corporate limits of their respective towns or cities, the same criminal jurisdiction which belongs to Justices of the Peace within their jurisdiction, under the provisions of this Code.

ART. 814. The proceedings before Mayors or Recorders shall be governed by the same rules which are prescribed for Justices of the Peace, and every provision of this Title with respect to a Justice shall be construed to extend to Mayors and Recorders within the limits of their jurisdiction.

ART. 815. The jurisdiction given to Mayors and Recorders of incorporated towns and cities shall not prevent Justices of the Peace from exercising the criminal jurisdiction conferred upon them. But in all cases where there is an in-

corporated town or city within the bounds of a county, the Justices, and the Mayor and Recorder, shall have concurrent jurisdiction within the limits of such town or city.

ART. 816. Warrants issued by a Mayor or Recorder are directed to the Marshal or other proper officer of the town or city where the criminal proceeding is had; but in case there be no such officer, the process issued by a Mayor or Recorder shall be directed to any peace officer within the city, town or county, and shall be executed by such officer.

ART. 817. Each Justice of the Peace, Mayor and Recorder, shall keep a book in which he shall enter the proceedings had before him in a criminal action, noting the time of issuing his warrant, the name of the defendant, the accusation against him, a minute of the trial, verdict, judgment, and all proceedings had in the cause.

ART. 818. In every county of the State where an Attorney has been appointed by the County Court to represent the interests of the county, such Attorney shall have the right to prosecute, in the name of the State, all persons guilty of offences cognizable before Justices of the Peace.

CHAPTER II.

OF THE ARREST OF THE DEFENDANT.

ARTICLE 819. Whenever a criminal offence which a Justice of the Peace has jurisdiction to try, shall be committed within the view of such Justice, he may issue his warrant for the arrest of the offender.

ART. 820. Whenever any credible person complains to a Justice of the Peace that an offence has been committed which, by law, such Justice has jurisdiction to try, he shall

cause the complaint to be reduced to writing and sworn to, and such complaint shall be attested by the Justice and filed.

ART. 821. The Justice shall, immediately upon receiving the complaint, issue his warrant to any peace officer, commanding him to arrest the defendant and bring him before such Justice. The warrant shall be dated and signed by the Justice; it shall set forth in intelligible terms the nature of the offence of which the defendant is accused, and name the place of trial.

ART. 822. Any peace officer into whose hands a warrant may come shall execute the same, by arresting the person accused, and bringing him forthwith before the Justice of the Peace.

CHAPTER III.

OF THE TRIAL AND ITS INCIDENTS.

ARTICLE 823. When the defendant is brought before the Justice he shall proceed to try the cause without delay, unless good ground be shown for a postponement thereof, in which case he may postpone the trial to any time not longer than five days, and may, if he deem proper, require the defendant to give bail for his appearance. And if, when required, he fails to give bail, he shall be kept in custody until the final determination of the cause.

ART. 824. If the warrant has been issued upon a complaint made to the Justice, the complaint and warrant shall be read to the defendant. If issued by the Justice without previous complaint, he shall state to the defendant the accusation against him.

ART. 825. A defendant shall not be discharged by reason of any informality in the complaint or warrant; and the proceeding before the Justice shall be conducted without reference to technical rules.

ART. 826. The Justice shall issue his order to the Constable or other peace officer, directing him to summon a Jury of twelve men for the trial of the cause before him.

ART. 827. The defendant and the complainant, or any counsel prosecuting for the State, shall be entitled to four peremptory challenges each.

ART. 828. Either party may challenge any number of Jurors for the following causes:

1. That the Juror is not a freeholder in the State or householder in the county.

2. That the Juror is not a qualified elector of the county.

3. Relationship by consanguinity or affinity, between the Juror and the defendant or complainant.

4. That the Juror has been convicted of some offence which, by law, disqualifies him from sitting on a Jury.

ART. 829. After impannelling the Jury, the defendant shall be required to plead, and he may plead "guilty" or "not guilty," or the special plea named in the succeeding Article.

ART. 830. The only special plea allowed is that of former acquittal or conviction for the same offence.

ART. 831. All pleading in the Justice's Court, in criminal actions, is oral; but the Justice shall note upon his minutes the nature of the plea offered.

ART. 832. If the defendant plead "guilty," proof shall be offered to the Jury, as to the offence; and they shall assess the amount of fine.

ART. 833. If the defendant refuse to plead, the Justice shall enter the plea of "not guilty," and the cause proceed accordingly.

ART. 834. The following oath shall be administered by the Justice of the Peace to the Jury:

"You swear that you will well and truly try the issue before you, between the State and the defendant, according to law and evidence, so help you God."

ART. 835. If the State be represented by counsel he may examine the witnesses and argue the cause to the Jury; if the State is not represented the witnesses shall be examined by the Justice.

ART. 836. The defendant has a right to appear by counsel as in all other cases, but not more than one Attorney shall conduct either the prosecution or defence; and the counsel for the State may open and conclude the argument to the Jury.

ART. 837. The rules of evidence which govern the trials of criminal actions in the District Court shall apply also to such actions in Justice's Courts.

ART. 838. When the cause is submitted to the Jury they shall retire in charge of some officer, and be kept together until they agree to a verdict or are discharged.

ART. 839. If a Jury fail to agree upon a verdict, after being kept together a reasonable time, they shall be discharged; and, if there be time left on the same day, another Jury shall be impannelled to try the cause; or the Justice may adjourn for not more than two days, and again impannel a Jury for the trial of such cause.

ART. 840. In case of an adjournment the Justice shall require the defendant to enter into bail for his appearance; and upon his failure to give bail the defendant may be held in custody.

ART. 841. Bail bonds taken in accordance with any of the preceding Articles of this Chapter may be sued on in the name of the State before the District Court, and recovery had as provided in Article 87.

ART. 842. When the Jury have agreed upon a verdict,

they shall bring the same into Court, and the Justice shall see that it is in proper form.

ART. 843. The Justice shall enter the verdict upon his minute book, and render the proper judgment thereon.

ART. 844. Wherever, by the provisions of this Title, the peace officer is authorized to retain a defendant in custody, he may place him in jail or any other place where he can be safely kept.

CHAPTER IV.

OF THE JUDGMENT AND EXECUTION.

ARTICLE 845. The judgment, in case of conviction in a criminal action before a Justice of the Peace, shall be that the State of Texas recover of the defendant the fine assessed by the Jury and costs, and that the defendant remain in custody of the Sheriff until the fine and costs are paid, and further, that execution issue to collect the same.

ART. 846. A defendant, before a Justice, may be discharged by the payment of the fine and costs, or by entering into bond payable to the State of Texas, with good security for the amount of such fine and costs, within thirty days from the time of judgment.

ART. 847. The bond taken under the provisions of the preceding Article shall be filed with the Justice, and at the end of thirty days from the rendition of judgment shall operate as a judgment, and execution be issued upon the same, unless the money therein due be paid into the hands of the Justice in satisfaction thereof.

ART. 848. If a defendant be placed in jail on account of

failing to pay the fine and costs, he can be discharged on habeas corpus by showing:

1. That he is too poor to pay the fine and cost, and, further,

2. That he has remained in jail a sufficient length of time to satisfy the fine, at the rate of three dollars for each day. And a Justice of the Peace may discharge the defendant upon his showing the same cause, by written application presented to such Justice, and upon any such application being granted the Justice shall note the same on his minute book.

ART. 849. In every case of conviction before a Justice there shall be issued an execution for the collection of the fine and costs, which shall be enforced and returned in the manner prescribed by law in civil actions before Justices.

ART. 850. Every peace officer is bound to execute all process directed to him from a Justice of the Peace.

TITLE II.

OF CORONERS' INQUESTS.

ARTICLE 851. It is the duty of the Coroner to hold inquests in the following cases:

1. When any person dies in prison.

2. When any person is killed, or from any cause dies an unnatural death, except under sentence of the law.

3. When the body of any human being is found, and the circumstances of his death are unknown.

4. When the circumstances of the death of any person are such as to lead to suspicion that he has come to his death by violent means.

ART. 852. When a body upon which inquest ought to have been held has been interred, the Coroner may cause it to be disinterred for the purpose of holding such inquest.

ART. 853. The Coroner shall act in such cases upon verbal or written information given him by any credible person, or upon facts within his own knowledge.

ART. 854. It is the duty of the Sheriff, and of every keeper of any prison, to inform the Coroner of the death of any person confined therein.

ART. 855. The Coroner may summon a Jury of inquest himself, or may direct an order to any peace officer for that purpose.

ART. 856. A Jury of inquest shall consist of six men, citizens of the proper county, freeholders or householders and qualified electors.

ART. 857. A person summoned as a Juror in such cases who refuses to obey the summons, may be fined by the Coroner, not exceeding ten dollars.

ART. 858. The Coroner shall, so soon as a Jury is summoned, proceed with them to the place where the dead body may be, for the purpose of inquiring into the cause of the death.

ART. 859. The following oath shall be by the Coroner administered to the Jury: "You swear that you will diligently enquire into the cause, manner, time and circumstances of the death of the person whose body lies before you, and that you will thereupon make presentment of the truth, the whole truth, and nothing but the truth, so help you God."

ART. 860. The Coroner shall have power to issue subpœnas to enforce the attendance of witnesses upon an inquest; and, in case of disobedience or failure to attend, may issue attachments for such witnesses.

ART. 861. The testimony of each witness shall be reduced to writing, under the direction of the Coroner, and subscribed by the witness.

ART. 862. A Coroner's inquest may be held in private if deemed proper. If other persons than the Coroner and the Jury be present, they shall not interfere with the proceedings; and no question shall be asked a witness, except by the Coroner or one of the Jurors, unless, as in cases provided for in Article 865, some person is present, who has been accused of killing the deceased. In all such cases the accused may interrogate the witness.

ART. 863. After having examined into the cause, time, manner and place of the death of the deceased, the Jury shall form their verdict, setting forth distinctly the facts relating thereto, which they find to be true; which verdict shall not be valid unless signed by the Coroner and each of the Jurors.

ART. 864. The Coroner shall keep a book, in which he shall make a minute of all the proceedings relating to every inquest held by him. Such minute shall set forth,

1. The nature of the information given the Coroner, and by whom given, unless he acts upon facts within his own knowledge.

2. The time and place when and where the inquest is held.

3. The name of the deceased, if known, or, if not known, as accurate a description of him as can be given.

4. The verdict of the Jury of inquest.

5. If any arrest is made of a suspected person before inquest held, the name of the person and the fact of his arrest, as well as everything material which relates thereto, shall be noted.

ART. 865. When the Coroner has knowledge that the killing was the act of any person, or when an affidavit is made that there is reason to believe that such person has killed the deceased, a warrant may be issued for the arrest of the person accused, before inquest held, and the accused shall have the right to be present when the same is held.

ART. 866. Any peace officer to whose hands the Coroner's warrant of arrest shall come, is bound to execute the same without delay; and he shall detain the person arrested until

his discharge is ordered by the Coroner, or some Judge upon habeas corpus.

ART. 867. A warrant of arrest in such cases shall be sufficient if it issues in the name of "The State of Texas," recites the name of the accused, or describes him when his name is unknown, sets forth the offence charged in plain language, and is signed officially by the Coroner.

ART. 868. If it be found by the verdict of the Jury of inquest that a person already arrested did in fact kill the deceased, or was an accomplice or accessary to the death, the Coroner may, according to the facts of the case, commit him to jail, or require him to execute a bail bond with security for his appearance before the proper court to answer for the offence.

ART. 869. A bail bond taken before a Coroner shall be sufficient if it recite the offence of which the party is accused, be payable to the State of Texas, be dated and signed by the principal and his surety.

ART. 870. The Coroner shall file with the Clerk of the District Court of the proper county the warrant of arrest, the testimony taken, the bond and other papers relating to the inquest. If the District Court be in session, the papers shall be forthwith filed; if not in session, they shall be filed on or before the first day of the next term of the court.

ART. 871. A bail bond taken in accordance with the directions of this Title, may be forfeited and judgment recovered thereon as in cases of other bail bonds.

ART. 872. When, by the verdict of a Jury of inquest, it is found that any person not in custody killed the deceased, or was an accomplice to the death, the Coroner shall issue his warrant to the Sheriff or other peace officer, commanding him to arrest the person accused and take him before some Magistrate to be named in the writ.

ART. 873. The warrant issued in accordance with the provisions of the preceding Article shall be sufficient if it run in the name of "The State of Texas," give the name of

the person accused, or describe him when his name is unknown, recite the offence with which he is charged in plain language, and be dated and signed officially by the Coroner.

ART. 874. The peace officer into whose hands such warrant may come, shall forthwith execute the same by arresting the defendant and taking him before the Magistrate named in the warrant, and the Magistrate shall proceed to examine the accusation, and the same proceedings shall be had thereon as in other cases where persons accused of offences are brought before him.

ART. 875. When there is no Coroner in a county, or he is absent or unable to serve, or resides more than ten miles from the place where any dead body is found, the duties prescribed in this Title to be performed by him may be performed by any Justice of the Peace of the county, who shall proceed in holding the inquest according to the rules prescribed for the government of the Coroner.

ART. 876. When a Jury of inquest have agreed to a verdict, it is the duty of the Coroner or Justice holding the inquest to certify that the same is the verdict of the Jury.

ART. 877. Nothing contained in this Title shall prevent proceedings from being had for the arrest and examination of an accused person before a Magistrate, pending the holding of an inquest. But when a person accused of an offence has been already arrested under a warrant from the Coroner, he shall not be taken from the hands of the peace officer by a warrant from any other Magistrate.

TITLE III.

OF FUGITIVES FROM JUSTICE.

ARTICLE 878. A person charged in any State or Territory of the United States with treason, felony or other crime, who shall flee from justice and be found in this State, shall, on demand of the Executive authority of the State or Territory from which he fled, be delivered up to be removed to the State or Territory having jurisdiction of the crime.

ART. 879. It is declared to be the duty of all judicial and peace officers of the State, to give aid in the arrest and detention of a fugitive from any other State or Territory, that he may be held subject to a requisition by the Governor of the State or Territory from which he may have escaped.

ART. 880. No person shall be arrested, or if arrested shall be delivered up on the requisition of the Governor of any other State or Territory, where it appears that the offence with which he is charged was committed prior to the sixteenth day of February, A. D. 1846.

ART. 881. Whenever the Governor of this State may think proper to demand a person who has committed an offence in this State, and has fled to another State or Territory, he may commission any suitable person to take such requisition; and the accused person, if brought back to the State, shall be delivered up to the Sheriff of the county in which it is alleged he has committed the offence. A reasonable compensation for his services shall be paid to the person so commissioned out of the Treasury of the State.

ART. 882. Whenever complaint on oath is made to a Magistrate that any person within his jurisdiction is a fugitive from justice from another State or Territory, it is his duty to issue a warrant of arrest for the apprehension of the person accused.

ART. 883. The complaint shall be sufficient if it recite:

1. The name of the person accused.

2. The State or Territory from which he has fled.

3. The offence committed by the accused.

4. That he has fled to this State from the State or Territory where the offence was committed.

5. That the act alleged to have been committed by the accused is a violation of the Penal law of the State or Territory from which he fled.

ART. 884. The warrant of a Magistrate to arrest a fugitive from justice shall direct the peace officer to apprehend the person accused and bring him before such Magistrate.

ART. 885. When the person accused is brought before the Magistrate, he shall hear proof, and if satisfied that the defendant is charged in another State or Territory with the offence named in the complaint, he shall require of him bail to appear before such Magistrate at a specified time; and in default of such bail, he may commit the defendant to jail to await a requisition from the Governor of the State or Territory from which he fled.

ART. 886. A properly certified transcript of an indictment against the accused shall be evidence to show that he is charged with the crime alleged.

ART. 887. A person arrested under the provisions of this Title shall not be committed or held to bail for a longer time than six months.

ART. 888. The Magistrate by whose warrant an accused person is arrested shall forthwith give notice to the District Attorney of the District in which the arrest is made, who shall forthwith, through the mail, give notice to the Governor of the State or Territory from which the defendant is charged to have fled.

ART. 889. If the defendant is not arrested under a warrant from the Governor of this State before the expiration of the time for which he is committed, or held to bail, he shall be discharged.

ART. 890. A person who shall have been once arrested under the provisions of this Title, and discharged under the provisions of the preceding Article, or by habeas corpus, shall not be again arrested upon a charge of the same offence, except by warrant from the Governor of this State.

TITLE IV.

OF VAGRANTS.

ARTICLE 891. A vagrant is an idle person, living without any visible means of support, and making no exertion to obtain a support by any honest employment.

ART. 892. It is the duty of each Chief Justice of a county and Justice of the Peace, to order the arrest of vagrants; which may be done by warrant, directed to any peace officer.

ART. 893. A warrant to arrest a vagrant may be issued upon complaint made on oath by any three credible persons, householders of the county where the complaint is made.

ART. 894. A peace officer shall arrest a vagrant when directed by warrant, and take him before one of the Magistrates named in Article 892.

ART. 895. When a person arrested is taken before the Magistrate he shall proceed to ascertain whether he is a vagrant within the meaning of the law, and if it be found that he is, the Magistrate shall make an order that such vagrant be put to labor in such manner as the County Court may direct.

ART. 896. The Magistrate trying a case of vagrancy shall certify to the County Court his order in every case where he has adjudged a person to be a vagrant.

ART. 897. The County Court of each county shall, by general regulation, provide for the manner in which vagrants are to be employed, and the kind of labor to which they shall be put, which may be upon any road, bridge or other public work of the county.

ART. 898. The County Court shall so regulate the disposal of vagrants as that they may be compelled to labor for the first offence not more than one week, and for the second, or any subsequent offence, not more than three weeks, during which time the person so compelled to work shall be supported, and, if deserving thereof, shall be paid an additional compensation, at the discretion of the County Court, out of the county treasury.

ART. 899. The municipal authorities of incorporated towns and cities may make like regulations respecting cases of vagrancy within their respective jurisdictions, and vagrants may be arrested and dealt with under the warrant of the Mayor, or Recorder, of such town or city; may be compelled in like manner to labor upon any street or public work of such town or city, and shall be supported and compensated therefor out of the treasury of the corporation, at the discretion of such municipal authorities.

ART. 900. A person arrested as a vagrant may demand a trial by Jury, and the Magistrate shall thereupon cause a Jury of twelve householders or freeholders to be summoned and sworn for the trial of such person, and render such judgment as the verdict authorizes.

TITLE V.

OF DISORDERLY PERSONS.

ARTICLE 901. The municipal authorities of each city or town may make such regulations as may be deemed expedient for the arrest and punishment of disorderly persons; and the County Court of each county may provide for the employment in labor, upon public works, of all persons arrested and adjudged by a Magistrate to be disorderly persons.

ART. 902. The following are disorderly persons within the meaning of this Title:

1. Strolling persons who go about proposing to tell fortunes, or exhibiting in public any cheating tricks or apparatus.

2. Keepers of baudy houses, or houses for the common resort of prostitutes, vagabonds or free negroes.

ART. 903. Disorderly persons may be arrested and dealt with as vagrants are directed to be treated by the provisions of Title IV, Part IV, of this Code; and like proceedings as in cases of vagrants may be had before Magistrates, in ascertaining whether a person arrested is a disorderly person.

ART. 904. A person adjudged by the Magistrate to be a disorderly person may also be fined, not exceeding twenty-five dollars and imprisoned in Jail, not exceeding ten days.

ART. 905. Disorderly persons may demand a trial by Jury in the same manner as vagrants.

TITLE VI.

OF PROCEEDINGS AGAINST FREE PERSONS OF COLOR REMAINING IN THE STATE IN VIOLATION OF LAW.

ARTICLE 906. A person of color is one who has at least one-fourth African blood

ART. 908. No free person of color can lawfully immigrate to, or remain in this State, except where special permission is given by the Constitution and Laws of the State.

ART. 909. Where a free person of color, who is not specially permitted by law to reside in the State, is found within its limits, any Magistrate may, from his own knowledge, or upon information given him by a credible person, issue his warrant for the arrest of such free person of color.

ART. 910. And thereupon the Magistrate shall give a written order to the Sheriff of the county to take such free person of color, and hire him for the term of six months to the highest bidder, at the court-house of the county, giving notice of the hiring by advertisement posted up at two or more public places in the county.

ART. 911. The proceeds of the hire of a free person of color shall be collected by the Sheriff, and after deducting costs of the proceedings and expenses, the remainder shall be paid over to such person to enable him to leave the State, and the Sheriff shall notify him to leave within thirty days from the time he receives the money.

ART. 912. If a free person of color does not leave the State within thirty days from the time the proceeds of his hire is paid to him as directed in the preceding Article, he may be arrested by the Sheriff of the county, upon the warrant of a Magistrate, and may be hired at public outcry to the highest bidder, for cash, for the term of five years, unless

he can show, when brought before the Magistrate, that he was prevented from leaving the State by sickness, or other unavoidable casualty, in which case an additional time of thirty days shall be given him to leave the State; and if he be found in the State after the expiration of that time he shall be proceeded against as above directed in this Article.

ART. 913. One-half of the proceeds of the hiring provided for in the preceding Article shall be paid into the County Treasury, and the balance to the free person of color, after deducting five per cent. of the whole amount as compensation for the services of the Sheriff.

ART. 914. At the expiration of the term of five years, for which any free person of color is hired as herein directed, the portion of the proceeds of the hire to which he is entitled shall be paid to him, and he shall be again warned by the Sheriff to leave the State.

ART. 915. If after the expiration of thirty days from the time when the money is paid to a free person of color he be found in the State, a warrant of arrest may be again issued, and he may be brought before a Magistrate, and unless he can make it appear satisfactorily that he was prevented from leaving by force, or by reason of sickness, or some unavoidable casualty, the Magistrate shall issue an order to the Sheriff for the sale of such free person of color, by virtue of which the Sheriff shall, after advertising for ten days, by public notice in some newspaper in the county, if there be one published in the county, or by notices posted up at two or more public places, if there is no newspaper published in the county, sell such free person of color as a slave for life, to the highest bidder, for cash.

ART. 916. The ownership of said person of color shall by such sale be fully vested in the purchaser. The proceeds of the sale shall be paid into the County Treasury, after deducting five per cent. as compensation for the services of the Sheriff.

ART. 917. A free person of color, while hired under the provisions of any of the foregoing Articles, shall in all respects for the term of the hiring be considered and treated as a slave.

TITLE VII.

OF PROCEEDINGS BEFORE JUSTICES OF THE PEACE AND MAYORS, AGAINST SLAVES WHO HIRE THEIR TIME, OR ARE HIRED TO OTHER SLAVES, OR TO FREE PERSONS OF COLOR.

ARTICLE 918. It shall not be lawful for the master of any slave to permit such slave to hire his time, or to hire him to any other slave, or to any free person of color.

ART. 919. The term master, as used in this Title, includes all persons having the charge, control, or management, of slaves for any period of time.

ART. 920. By the term "hire his time," as used in this Title, is meant any contract between the master and slave, by which such slave agrees to pay any stipulated price for his time, and during such time regulates his own conduct in respect to labor to be performed by him, or makes contracts as to such labor.

ART. 921. The provisions of this Title shall not prevent the master of a slave from permitting such slave to go at large for one day at a time in search of employment.

ART. 922. It is the duty of every peace officer, and any other person has the right, to arrest a slave who may be found hiring his time, or hired to any free person of color or slave contrary to the provisions of this Title.

ART. 923. Any Justice of the Peace, Mayor, or Recorder, of a town or city, may, by order either verbal or written, directed to a peace officer, cause the arrest of a slave who hires his time, or is hired to another slave, or to a free person of color.

ART. 924. When a slave is arrested by a peace officer, or

other person, under the provisions of the two preceding Articles, he shall be taken before a Justice of the Peace, Mayor, or Recorder. The jurisdiction of a Justice of the Peace, in such cases, shall extend to his county, and that of Mayors and Recorders to the limits of their respective corporations.

ART. 925. The Justice, Mayor, or Recorder, shall proceed in a summary manner to examine into the facts, and if it be found that such slave has been permitted to hire his time, or has been hired to a slave or free person of color, he shall commit such slave to the county Jail, to remain until discharged as hereinafter provided.

ART. 926. The Justice, Mayor, or Recorder, shall assess a fine of not less than ten, nor more than one hundred dollars, against the slave, who shall have been found hiring his time, or hired to another slave, or free person of color, and shall cause notice to be given to the master of such slave, if he reside within the county where the arrest takes place, or if he resides without the county, or be temporarily absent therefrom, then to his agent, if he has one in the county.

ART. 927. If the master of the slave, or any person for him, shall pay to the Sheriff of the county the amount of fine assessed by the Justice or Mayor against the slave, such slave shall be discharged from custody.

ART. 928. If a slave, arrested and committed under the provisions of this Title, remains in Jail for a time exceeding five days, it shall be the duty of the Sheriff to hire such slave for a term of thirty days at public out-cry, giving one day's notice thereof, by posting an advertisement at the court-house door of the proper county; such hiring shall be for cash, payable before the slave is delivered into the hands of the hirer.

ART. 929. The hirer of a slave under the provisions of the preceding Article, and under Article 931, shall be entitled to his services, and shall, during the time for which he is hired, exercise all the rights of ownership over such slave; and at the expiration of the thirty days shall deliver the slave into the hands of the Sheriff.

ART. 930. If the master, before or immediately upon the expiration of the time for which the slave was hired, make

application to the Sheriff, the slave shall be delivered to him so soon as the time shall have expired for which the hiring took place, upon his paying the fine assessed and all costs accruing by reason of the proceeding.

ART. 931. If no application by the master be made, or he refuse to pay the fine and cost, the Sheriff shall proceed, after giving five days notice by advertisement, posted at three public places, one of which shall be the court-house door, to hire such slave for a term of twelve months to the highest bidder, for cash, payable before the slave is delivered into the hands of the hirer; at the expiration of the time of hiring such slave shall be delivered into the hands of the Sheriff.

ART. 932. If, before or at the expiration of the time for which a slave was hired, under the preceding Article, the master make application to the Sheriff, such slave shall be delivered to him so soon as the time has expired for which the hiring took place, upon his paying to the Sheriff the fine assessed and the costs that have accrued by reason of the proceeding.

ART. 933. If no application be made, as provided for in the preceding Article, the Sheriff shall give public notice for thirty days, by posting advertisements at three of the most public places in the county, one of which shall be the court-house door, and no two of which shall be in the same town or city, (except the city of Galveston.) This notice shall state the facts as to the previous apprehension of the slave, and the proceedings which have taken place; shall contain a full description of such slave, and further state that unless claimed by some person duly authorised to receive the slave, he will be sold to the highest bidder, for cash, at the court-house door, on a day to be fixed by the notice. If there be a newspaper published in the county, this notice shall also be inserted therein, and if there be no newspaper in the county, then the same shall be published in a newspaper nearest to the county seat of the county where the proceedings have taken place.

ART. 934. The Sheriff shall deliver the slave, if demanded by his master, at any time before the sale has taken place, upon payment of the fine assessed and the costs that have accrued.

ART. 935. If no demand be made, as before provided, or

the person demanding refuse to pay the fine and costs, the slave shall be sold on the day appointed to the highest bidder, for cash, and the title of the purchaser shall be good and valid against all persons whatever.

ART. 936. All fines assessed, and all money received for the hire or sale of a slave, under the provisions of this Title, shall be paid into the County Treasury of the proper county, after deducting twenty per cent therefrom as compensation to the Sheriff for his services.

ART. 937. The Sheriff shall also be entitled to be paid, as costs, fifty cents a day for the time he may have the custody of any slave arrested under the provisions of this Title. He shall safely keep any such slave, and for that purpose may place him in Jail during any time when the slave is in his possession, by delivery from the hirer under Articles 929 and 931.

ART. 938. When any person shall apply for a slave as his master, under the provisions of this Title, the Sheriff may, if he has doubt as to the right of the person applying, require him to file suit in the District Court to establish his claim; and the claimant shall be entitled to damages in such suit, if it appear that the Sheriff was clearly wrong in refusing to deliver the property upon his demand.

ART. 939. If any person shall appear before the County Court within five years from the time of the sale of a slave under the provisions of this Title, and establish to the satisfaction of the Court his right as the owner of the slave sold, the County Court shall pay to such owner, out of any money in the treasury, the amount which was received by the county from the proceeds of a sale of the slave; and if the County Court refuse to pay the same the owner may bring his suiy against the county, in the District Court, to establish his right.

ART. 940. The term "owner," as here used, means the person having the rightful property in a slave, either in his own right, or as executor, administrator or guardian.

ART. 941. The application or demand, for the possession of a slave, spoken of in Articles 930, 932, 934, and 938, may be made by any duly authorised agent of the person who is

master or owner of the slave, and shall have the same effect as if made by such owner or master in person.

ART. 942. Upon any investigation before a Justice, or Mayor, under the provisions of this Title, if it be proved that a slave is in the habit of making contracts for himself, with regard to his labor, without the subsequent ratification by the master, or that he lives off the premises of his master, and conducts any business or labor not under the immediate superintendence of the master, it shall be deemed sufficient proof that he hires his time.

ART. 943. If it appear to the Justice, or Mayor, that a negro arrested as a slave is in fact a free person of color, who resides within this State in violation of law, such proceedings shall be had as are directed in Title VI, of Part IV. If it appear upon such examination that a slave arrested is a runaway, he shall be dealt with as directed by law in the case of runaway slaves.

TITLE VIII.

OF REPORTS RELATIVE TO CRIME.

ARTICLE 944. Each Clerk of the District Court shall, within twenty days after the adjournment of a term of the Court, make out and transmit to the Attorney General a report setting forth:

1. The number of indictments and informations presented to the last term of the Court and for what offences.
2. The number of arraignments, convictions and acquittals for each offence, and the penalties assessed in each case.
3. The number of indictments and informations which have been disposed of without the intervention of a petit Jury, with the cause and manner of such disposition.
4. The amount of money collected and reported by the Sheriff under any criminal process.

ART. 945. The Attorney General shall furnish to each Clerk of the District Court forms for reports in the cases provided for in the preceding Article.

ART. 946. Each Justice of the Peace shall report in like manner, to each term of the District Court, the number of causes which have been tried and determined before him, with the disposition made of the same in all cases where he has jurisdiction to try offences; and the Clerk of the District Court shall send a copy of such report to the Attorney General, accompanying his own report, as required by Article 944.

ART. 947. The Attorney General shall, on the first Monday in December of each year, communicate to the Governor of the State all the information which he has received from the District Clerks under the provisions of Articles 944 and 946, with such suggestions thereon as he may deem useful respecting the penal laws of the State and the enforcement of the same.

ART. 948. The information thus communicated to the Governor shall be by him laid before the Legislature at its regular or any called session.

PART V.

OF COSTS IN CRIMINAL ACTIONS.

TITLE I.

TAXATION OF COSTS.

ARTICLE 949. The Clerk of the Supreme Court, each Clerk of a District Court, and each Justice of the Peace and Mayor of an incorporated city or town, shall keep a book called a fee book, in which they shall tax the costs accruing in each criminal action or proceeding before them.

ART. 950. When, as hereafter provided, costs are to be paid by the State, the fees allowed in Title II, of this Part, shall be charged in criminal proceedings; and if any one of the officers named in the preceding Article shall charge, either for himself or any other persons entitled to costs, higher rates than are allowed by law, he is guilty of a penal offence, and subject, on conviction, to be removed from office.

ART. 951. When, as hereafter provided, costs are to be paid by the defendant, the fees allowed in Title III, of this Part, shall be taxed; and no officer entitled to fees shall charge higher rates than those allowed under the penalty prescribed in the preceding Article.

TITLE II.

OF COSTS PAID BY THE STATE.

ARTICLE 952. Costs in accordance with the rates herein fixed, shall be paid by the State to the following persons and in the following cases:

To the clerks of the District Courts shall be paid,

For each transcript on appeal, ten cents a hundred words.

To the Sheriff shall be paid in each case of felony, where the defendant is brought to trial, whether he be convicted or acquitted:

For executing each warrant of arrest or capias, or for making arrest without warrant, one dollar.

For summoning or attaching each witness, fifty cents.

For summoning Jury, two dollars.

For conveying prisoners to the Penitentiary, for each mile going and coming, ten cents; for each guard employed by him in conveying such prisoners, the same amount; and for the support of each prisoner ten cents for each mile traveled in going to the Penitentiary. For conveying a prisoner taken under criminal process, ten cents for each mile traveled in going to and returning from the place to which he is required to convey such prisoner, and the like sum for one person employed as a guard in such cases; and for the support of the prisoner ten cents for each mile traveled in going to the place to which he is required to convey such prisoner: the distance to be computed over the most commonly traveled route.

For executing death warrant, twenty-five dollars.

For each mile he may be compelled to travel in executing criminal process, or in summoning or attaching witnesses, six cents.

ART. 953. When services have been rendered by any peace officer other than a Sheriff, in cases where the State is liable for costs, such peace officer shall receive the same fees as are allowed the Sheriff.

ART. 954. The fees accruing to peace officers other than the Sheriff, shall be taxed as Sheriff's costs, the clerk noting the name of the peace officer. Such costs shall be collected by the Sheriff as a part of his own, and he shall be liable to pay the same to the proper person so soon as he has received it from the State; and if he refuse to pay the same when demanded he shall be liable in a civil action before a Justice of the Peace to pay five times the amount of such fees.

ART. 955. The fees allowed Sheriffs and Clerks shall be audited and paid by the officers of the State Treasury, upon the certificate of the Judge of the District Court attached to the bill of costs.

ART. 956. The costs and fees provided for being paid by the State under this Title shall be a charge against the defendants in cases where they are convicted, in the cases in which they may accrue, to be collected of defendants as other costs are under this Code, and when collected of defendants shall, in all cases, be paid by the officer collecting the same into the Treasury of the State.

TITLE III.

OF COSTS TO BE PAID BY COUNTIES, AND THE MANNER OF ENFORCING COLLECTION.

ARTICLE 957. Each county shall be liable for all the expenses incurred on account of the safe keeping of prisoners confined in their respective jails or kept under guard.

ART. 958. Each county shall be liable for the expenses of food and lodging for Jurors impannelled in a case of felony; but in such cases no scrip shall be issued or money paid to the Jurors whose expenses are so paid.

ART. 959. A Juror may pay his own expenses and draw his scrip, but the county is responsible in the first place for all the expenses incurred by the Sheriff in providing suitable food and lodging for the Jury, not to exceed, however, one dollar and twenty-five cents a day.

ART. 960. The Sheriff shall receive from the county one dollar a day for each guard he employs, and also the reasonable expenses of such guard, not exceeding one dollar a day, and for the support and maintainance of each prisoner in his custody, fifty cents a day during the time he has charge of such prisoner.

ART. 961. It is the duty of the Sheriff to pay the expenses of Jurors impannelled in cases of felony, (except when they are paid by the Juror himself,) the expense of employing and maintaining a guard, and to support and take care of all prisoners; for all of which he shall be reimbursed by the county according to the rates fixed in the two preceding Articles.

ART. 962. At each term of the District Court of his county the Sheriff may present to the District Judge presiding his accounts for the keeping of persons and maintaining guards since the last term of the Court, and also for all expenses incurred by him for food and lodging of Jurors in cases of trials for felony during the term at which his account is presented, which account shall be verified by the oath of the Sheriff.

ART. 963. If the account does not exceed the amount allowed by Articles 959 and 960, and the same appears to the Judge to be correct, he shall allow it; and such account shall be filed with the District Clerk.

ART. 964. The District Judge shall give to the Sheriff a draft upon the County Treasurer for the amount of each account allowed by him; and the same when presented to the County Treasurer shall be paid out of any money in his hands.

ART. 965. The Coroner shall be entitled to receive for summoning a Jury and all other business connected with an inquest upon a dead body, including certifying and returning the same to the proper Court, five dollars, to be paid out of

the County Treasury; and when a Justice of the Peace acts as Coroner he shall be paid a like fee for the same services.

ART. 966. Services performed under the last Article shall be proved by the affidavit of the Coroner or Justice, and presented to the District Judge, who shall, if the account be allowed, give his draft upon the County Treasurer, and the same shall stand upon the same footing and be paid as provided for drafts to the Sheriff.

ART. 967. The fund raised in accordance with Articles 806 and 807, shall not be appropriated by the County Court for any purpose other than the payment of costs due officers in criminal proceedings, and for which the counties are liable, and it is the duty of the County Treasurer to reserve said fund for that purpose, and pay out of it any draft drawn upon him by a District Judge.

ART. 968. Drafts drawn by a District Judge on the County Treasurer, shall, without any action of the County Court, or acceptance by the County Treasurer, be receivable for all county taxes at par. They may be transferred by delivery, and no ordinance, rule or regulation whatever, made by the County Court, shall postpone or defeat the right of a holder of such draft to pay county taxes therewith.

TITLE IV.

OF COSTS PAID BY THE DEFENDANT.

CHAPTER I.

IN THE SUPREME AND DISTRICT COURTS.

ARTICLE 969. In every case of misdemeanor, where the defendant is convicted, the costs shall be paid by him; and the same shall be taxed by the Clerk, and collected under execution or other process as provided in Articles 698, 699, 700 and 701.

ART. 970. Costs when adjudged against the defendant shall be allowed according to the following rates:

To the Attorney General shall be paid,

For every conviction for offences against the Penal Laws relating to gaming, when an appeal is taken and the judgment affirmed, twenty dollars.

For every like conviction and affirmance of judgment in other cases of misdemeanor, ten dollars.

ART. 971. To the District Attorney shall be paid,

In every case of conviction for violation of the laws against gaming, where no appeal is taken or where the judgment on appeal is affirmed, fifteen dollars.

For every like conviction and affirmance of judgment in other misdemeanors, ten dollars.

To the Clerk of the Supreme Court shall be paid,

In every appeal by the State in a case of misdemeanor, where the judgment is reversed, and in every appeal by the defendant where the judgment is affirmed, ten dollars.

ART. 972. To the District Clerk shall be paid,

For issuing eaeh capias, subpœna, attachment, or other process, fifty cents.

Entering appearance, ten cents.
Docketing cause to be charged once, fifteen cents.
Swearing and impannelling Jury, thirty cents.
Swearing each witness, ten cents.
Entering each order, thirty cents.
Receiving and recording verdict, thitry cents.
Entering judgment, fifty cents.
Each transcript on appeal. ten cents a hundred words.
Copy of indictment or information, when asked by defendant, fifty cents.

ART. 973. To the Sheriff shall be paid.
For executing warrant of arrest or capias, one dollar.
Summoning or attaching witness, fifty cents.
For each Jury, one dollar.
For executing search warrant, two dollars.
For each execution, two dollars.
For each commitment or release. one dollar.
For each bond, one dollar.
For attending prisoner on habeas corpus, three dollars a day.
For each mile necessarily traveled in executing any criminal process, including subpœnas and attachments for witnesses, six cents.

CHAPTER II.

IN JUSTICES COURTS.

ARTICLE 974. In every case of misdemeanor tried before a Justice of the Peace, Mayor or Recorder, the defendant upon conviction shall pay costs according to the rates herein fixed, and in every proceeding under this Code, where a Justice of the Peace, Mayor or Recorder, acts for the purpose of preventing or suppressing crime, costs shall be paid as herein provided.

ART. 975. Justices of the Peace, Mayors and Recorders shall be allowed costs as follows:

Issuing warrant of arrest, warrant of commitment, search warrant or other process against a defendant, one dollar.

Issuing subpœena or attachment, fifty cents.

Taking bail, one dollar.

Swearing witness, twenty-five cents.

Administering oath, where complaint is made to him relative to crime, fifty cents.

Swearing and impannelling Jury, one dollar.

Receiving and entering verdict and judgment, one dollar.

For each execution, one dollar.

For making copies of any papers or entries on his dockets, including certificate for any person applying for same, fifteen cents for each hundred words.

ART. 976. The Constable or other peace officer shall receive in all cases before a Justice of the Peace for misdemeanors, the following fees:

For executing warrant of arrest, or of commitment, one dollar.

Summoning Jury, two dollars.

Serving subpœna or attachment, fifty cents.

For each commitment, one dollar.

For each execution, one dollar.

For conveying prisoner to jail, including guard and all other expenses, twenty-five cents a mile.

For every mile he may necessarily travel in executing criminal process, including subpœnas and attachments for witnesses, six cents a mile.

In every case of violation of the law against gaming tried before a Justice of the Peace, Mayor or Recorder, five dollars in addition to the above fees.

ART. 977. To the Sheriff, in addition to the fees allowed in the preceding Article, shall be allowed,

For executing search warrant, two dollars.

For taking bail, one dollar.

ART. 978. The rules as to the rate of cost allowed to Justices of the Peace, Mayors and Recorders, and to peace officers, are to apply to proceedings before Justices, Mayors

and Recorders, in cases of vagrancy and of other special proceedings of a criminal nature; and where the defendant is not able to pay in cases of vagrancy, or of disorderly persons the same shall be a tax upon the county, and shall be allowed and paid by the County Court.

TITLE V.

OF COSTS TO BE PAID BY A WITNESS.

ARTICLE 979. In all criminal cases where a witness has been subpœnaed and fails to attend, he shall be liable for the costs of an attachment, unless good cause be shown to the Court or Magistrate why he failed to obey the subpœna.

FINAL TITLE.

SECTION 2. And be it further enacted, that no action, plea prosecution or proceeding in any criminal cause now pending, or which may be pending when this act takes effect, shall be affected by the repeal of the laws under which it originated, but the same shall proceed in all respects as if no such repeal had taken place; except that all proceedings had after the time this act takes effect shall be conducted according to its provisions.

SECTION 3. The provisions of this Code shall regulate proceedings in all criminal actions, and shall be the rule on all subjects of which it treats, from and after the first day of February, A. D. 1857.

SECTION 4. This act shall take effect on the first day of February, 1857, and from and after that time all laws and parts of laws now in force which regulate or refer to the prevention, suppression, prosecution and proceedings for the punishment of crime shall stand repealed.

Approved, 26th August, 1856.

NOTE.—In the enrolled copy of the Code, Article 412 follows Article 410, which is the only error of this kind made in the enrollment of the bill. On page 173 there is an error of the press, arising from a mistake in the copy furnished for publication: Article 908 should read 907; Article 909 should read 908, and the following Article should have been inserted as

ARTICLE 909. When a free person of color is arrested under a warrant issued by a Magistrate, he shall be brought by the officer making the arrest before such Magistrate.

INDEX

TO THE

CODE OF CRIMINAL PROCEDURE.

ACCOMPLICE,
testimony of, insufficient to convict unless corroborated, 653
ACCUSATION—see *Accused, Criminal Action.*
ACCUSED—see *Arrest, Bail, Commitment, Examing Court, Magistrate, Arraignment.*
constitutional provision respecting the trial of, 4
cannot before conviction be subjected to greater restraint than is sufficient to prevent escape, 21
duty of officer in such case, 21
must be confronted with witnesses, except in certain cases, 24
may waive certain rights, 26
when brought before a magistrate, to prevent the commission of an offence, to give bond if required, 81
refusing to give bond shall be committed, 82
may be discharged, when, 85, 86
cannot be punished until legally convicted, 17
after conviction by court of competent jurisdiction, cannot be prosecuted for same offence, 18, 19
acquittal of, however irregular, exempts from second prosecution or trial, 20
examination of, before magistrate, 233 to 256
has the right to examine witnesses, 236, 237
witnesses to be examined in his presence, 240
voluntary statement of, 241. 242, 243
when entitled to be discharged, 247, 248
may be again arrested, when, 249, 256

NOTE.—*The references are to the Articles.*

ACCUSED—(continued)
rules as to bail given by, 257 to 272, 284 to 296
surrender of, by surety, 273 to 280
person accused in case of stolen property may be arrested, 300
may be required to give bail, 331
to be discharged where there is no sufficient cause for detention in proceeding under search warrant, 387
arrest of, under capias, 416 to 434
may be arrested under, when, 419, 419, 423
bail to be required of, after indictment or information, 434, 436, 437, 439, 430, 432, 433
may be arrested under capais by any peace officer, but shall be delivered to the sheriff, 425
arrest of, under capias in capital case, 428
arrest of, under capais out of the county of the prosecution, 431 to 434
shall be conveyed in capital case to the county of prosecution, 431
may give bail to the sheriff in felony not capital or misdemeanor, 432
may be placed in jail when he refuses to give bail, 433
shall be discharged from custody, when, 434
as to continuances on application of, 514, 518 to 522, 526
as to change of venue on application of, 557, 559 to 536
entitled to be bailed or discharged on his own recognizance in certain cases, 534, 535
prosecution against, shall be dismissed when, 537
must be personally present upon his trial, when, 540
may be tried in his absence, when, 541
when to be placed in custody on trial,
surrender of, by bail after mistrial, 542
proceeding upon the trial, and acquittal or conviction of, 539 to 637
presumption as to innocence of, 640
confession of, when to be used, 661, 662, 663
judgment against, in case of felony, 682 to 690
in case of misdemeanor, 691 to 697
appeals by, to the Supreme Court, 719, 731, 732, 733, 735 to 737, 739 to 751, 753 to 763
proceedings against, in Justices and Mayors' and Recorders' Courts, 813 to 844

ACQUITTAL,
of defendant exempts from second trial or prosecution however informal, 20
on the ground of insanity, 636
when an informal verdict evidently appears intended as, 638
judgment upon verdict of, 639
of one or more defendants where others have been convicted, 687
discharge of defendant upon, 636
defendant may be made a witness upon, 569
court may direct verdict of, when, 636

AMENDMENT,
of indictment as to the name of the defendant, 469
as to other matter of form, 508
of pleas, 509
APPEAL,
may be taken by the State, when, 718
by the defendant, when, 719
no security required of the State on, 720
defendant in case of felony to be committed, when, 721
in case of misdemeanor, when, 722
defendant must enter into recognizance, when, 722, 723
on part of the State when taken, 724
on part of the defendant when taken, 725
mode of taking, 726
effect of, 727, 728
transcript on, to be prepared when, 729
how sent to the Supreme Court in cases of misdemeanor, 730
how sent in cases of felony, 731
clerk to certify as to all cases where appeals have been taken, 732
certificate to be filed by clerk of the Supreme Court, 733
clerk of Supreme Court to notify Attorney General, 733
affirmance of judgment in case of misdemeanor for failure to file transcript, 734
where transcript is not received in case of felony, 735
no judgment against defendant to be affirmed, unless record is received, 736
second transcript to be sent, when, 737
affirmance of judgment against the State, for failure to file transcript, 738
to be docketed, how, 739
defendant need not be present at the trial on, 740
to be heard and determined, when, 741
judgment of supreme court on, 742, 744
mandate to be transmitted, when, 743
supreme court may make rules of procedure as to trials on appeal, 745
certificate of judgment on, to be filed by district clerk, 746
proceedings in the district court upon affirmance, 747, 748, 749
upon the grant of new trial, 750
upon affirmance against the State, 751
upon reversal in favor of the State, 752
when judgment is reversed in favor of defendant and cause dismissed, 753
On habeas corpus,
transcript to be sent up, 754
shall be heard upon the law and facts arising upon the record, 755
to be heard only on the merits, 756
to be heard at the earliest practical time, 757
cost, how regulated, 758
judgment to be conclusive, 759

APPEAL—(*continued.*)
judgment on, how certified, 759, 761, 763
liability of officer for disobeying judgment, 760
defendant need not be present upon appeal, 762
proceeding where bail is to be taken, 763

ARRAIGNMENT,
object of, 462
not to take place except in capital cases, 461
nor until two days after service of copy of indictment, 463
before arraignment, court shall ascertain whether a motion, exception or plea is filed, 464
defendant may file pleas at any time before, 465
counsel to be appointed at the time of, in what case, 466
written pleadings to be decided upon before, 467
counsel appointed to defend to be allowed time after, 467
proceedings upon, 468 to 475
when no suggestion is made as to the name of defendant, 468
when it is suggested that the prisoner bears some other name, 469
when he refuses to give his true name, 470
when defendant is indicted by fictitious name, 471
indictment read when, 472
where defendant pleads "not guilty," 473, 474, 480
where defendant pleads "guilty," 475, 476, 480
judgment of death in no case to be given without the verdict of a jury, 477
rule as to pleading where no arraignment is necessary, 478
proceeding in felonies less than capital, as to name of defendant and amendments, 479

ARREST—See *Capias, Peace Officer, Sheriff.*
of offenders to be made for the purpose of bringing them to punishment, 32
Order of, by Magistrate to peace officer.
1. when injury is about to be committed under his observation, 74
2. where threat is made in his presence, 75
warrant of, when to be issued on information, 80
by magistrate, 75
By peace officer.
warrant of, when sufficient in case of offences threatened or about to be committed, 83
district court in session may cause arrests in certain cases to prevent offences, 93
may require recognizance, 93
of persons engaged in riot, 99
warrant of, in aid of the writ of habeas corpus, 133 to 136, 151
without warrant, 209 to 214
1. by peace officer when offence is committed within his view, 209

ARREST—(*continued.*)

2. when felony or breach of the peace is committed within view of a magistrate, and he orders the arrest, 210
3. when it is satisfactorily shown that a felony has been committed and the offender is about to escape, and there is no time to procure warrant, 212

when lawfully made without warrant, officer is justified in the same manner as under warrant, 213
when made without warrant, party shall be immediately taken before a magistrate, 214
rules may be established by municipal authorities in certain cases respecting, 211
warrant of, defined, 215
when sufficient, 216
may be issued when, 217, 218
complaint, what is, 219
shall be reduced to writing and signed or subscribed with a mark, 220
warrant of, how directed, 221
endorsement of, when offender escapes to another county, 221
may be directed in certain cases to any person willing to execute, 223
no person except peace officer can be compelled to execute warrant, 224
person agreeing to execute warrant has all the rights, and is subject to the liabilities of peace officer, 224
person taken under warrant to be taken before magistrate, 225
rule where person is arrested out of the county where the offence was committed, 226
when person is said to be arrested, 227
force which may be used to arrest, 229, 230
officer shall make known his authority and exhibit warrant when requested, 231
person escaping may be retaken without warrant, 232
in cases of stolen property, &c., under search warrant, 309, 310, 318
under capias, 418 to 434
by warrant of the coroner, 865, 866, 867, 872, 873
of fugitives from justice, 879, 882, 884, 887 to 890
in cases where justices have jurisdiction to try, 819 to 822
of vagrants, 892, 893, 894
of disorderly persons, 901, 902, 903
in criminal actions before justices, 819

ARREST OF JUDGMENT,

definition of motion in, and how made, 675
motion in, must be made within two days after verdict, 676
exception to the rule, 676, 677, 684, 685, 688
may be granted on what ground, 678
not granted for want of form, 679
effect of, 680. 681

ATTACHMENT—See *Witnesses*
definition of, 439
for witnesses when to be issued, 436, 437
not to be issued in misdemeanors until after disobedience to the writ of subpœna, 440
ATTORNEY—See *Attorney at Law.*
appointed for county may prosecute in justice's court, 818
fees of, for collecting fines, &c., 808
ATTORNEY AT LAW,
shall not divulge a communication made by his client, 646
ATTORNEY GENERAL,
shall appear for the State in the supreme court, in all cases where he has not been, before his election, employed adversely, 28
shall appear for the State in cases of habeas corpus when, 29
shall furnish forms to District Clerks as to reports relating to crime, 945
shall report to the Governor information received relative to crime, 947
duty of, in certain cases of appeal, 734
BAIL—See *Recognizance—Bail Bond.*
excessive, shall not be required, 8
prisoner when entitled to, 6
definition of the term, 257
security given by recognizance or bail bond, 258
definition of recognizance, 259
of bail bond, 260
bail bond, when entered into, 261
word applies to recognizances and bail bonds, 262
definition of "on bail," "given bail," 262
recognizance when sufficient, 263
bail bond when sufficient, 264
rules prescribed, applicable to all cases of, 265
recovery upon recognizances and bail bonds, 266
how recognizances and bail bonds are construed, 267
rule as to married women and minors, 268
number of sureties and their sufficiency, 269
sureties to be severally bound, 281, 283
property exempt from liability, 270
oath to be taken by surety, 271
rule as to amount of bail, 272
surrender of principal by, 273 to 283
may surrender principal, how, 273
rule where surrendered during term of court, 274, 276
in case surety desires to surrender, may obtain warrant how, 274
when surrendered in vacation of court, 275, 277
order of the court in case of surrender, 276
warrant of commitment by magistrate, for failure to give other bail, 277
as to sending defendant to another county, in case of surrender, 278
authority of sheriff to take bail, 279, 280

BAIL—(*continued.*)
in case of surrender by one surety, the others still bound, 282. 283
before examining court, 284 to 299
what rules applicable to, 284
after examination, magistrate, in a proper case, shall require bail, 285
for offences less than capital, defendant is entitled to bail, 286
rule in capital cases, 287
amount to be fixed by magistrate, 288
reasonable time to be allowed to procure bail, 289
commitment for failure to give bail, 290
bail bond to be prepared by whom, 291
as to form of bond, 292
accused set at liberty on giving bond, 293, 294
proceedings to be certified by magistrate, 295, 296
bail by witness, 297, 298, 299
may be required of witnesses on both sides, 297
amount of bail, how regulated, 298
bond how recoveeed upon, 299, 450
in case of property taken under search warrants, 331, 333
in case of change of venue, 534
forfeiture of bail, 407 to 417
when recognizance or bail bond may be forfeited, 407
mode of forfeiting, 408
surety to be cited, 409, 412
answer of sureties, 410
failure of surety to answer, 412
causes which exonerate sureties, 413, 414
rule where defendant appears before final judgment, or is arrested, 415, 416
judgment against surety, when no sufficient cause is shown for the failure of defendant to appear, 417
taken by sheriff, when arresting under capias, 424, 426, 429, 432
taken by coroner, 868, 869, 871
in case of fugitives from justice, 885, 887, 889
defendant entitled to bail when continuances have been granted to the State, and he demands a trial, 524
upon appeal, 721, 722, 723
forfeiture of, to collect fine, 695
in cases tried before justices, mayors, and recorders, 823, 840, 841
in cases before coroners, 868, 869, 871

BAIL BOND—See *Bail—Surety.*
to be taken where the life of a person is threatened, 91
definition of, 257, 258, 260, 261
when sufficient, 264, 292
recovery upon, 266, 407 to 417
how construed as to the appearance of the party, 267
in case of property taken under search warrant, 333

BAIL BOND—(*continued.*)
executed before coroner, 868, 869, 870
appropriation of money collected under, 806, 807
fees for collecting, 808
BAILIFF,
to be appointed for grand jury, 358
his duties, 359
to be appointed for jury on the trial of criminal action, 608
his duties, 609
BILL OF EXCEPTIONS,
to any decision, opinion, order, or charge of the court, shall be signed, 603
BOND—See *Bail—Bail Bond.*
to be taken by magistrate for the prevention of offences, 81
when sufficient, 84
how sued on and collected, when taken to prevent offence, 87, 88
surety may exonerate himself from, how, 89
duty of magistrates as to amount of, 90
oath by surety to, 90
to prevent the circulation, etc., of libel, 95
may be required after conviction, for engaging in occupation injurious to public health, 108
in such case, nature of the bond and mode of enforcing, 109
proof of breach of bond in such case, 110
sureties on, to be severally bound, 281, 283
in cases of surrender by one surety, the others are still bound, 282, 283
appropriation of money collected under, 806, 807
fees for collecting, 808
CAPIAS,
term defined, 420
when sufficient, 421
when to be issued, 418, 419, 422
1. where defendant on bail fails to appear, 418
2. where defendant has not been arrested or bailed, 419
3. immediately upon the presentment of indictment or information, 422
shall not lose its force, if not executed within the time directed, 423
any peace officer may arrest under, 425
defendant arrested under, to be delivered to the sheriff, 425
sheriff arresting under, may take bail when, 426
defendant arrested under, to be brought before the court when, 427
to be confined in jail when, 428
of the bail taken by sheriff, when arresting under, 429
rules applicable to arrests under, when made in the county of the prosecution, 430
arrests under, out of the county of the prosecution, 431 to 434
1. in capital cases, 431
2. in felonies not capital, 432
3. in misdemeanors, 432

CAPIAS—(*continued.*)
4. in bailable cases, where the defendant refuses to give bail, 433
5. where the defendant has been placed in jail, 434
arrest under, after judgment, 692
in case of escape before or after verdict, 697
execution of, when issued after judgment, 698, 699, 705

CHALLENGE,
to the array of grand jurors, 362, 363
causes of, 363
to any member of the grand jury, 362, 364
causes of, 364
to array, or particular member of grand jury, to be decided summarily, 365
duty of court, when challenge is sustained to the array, or to members of the grand jury, 366, 367
to the array may be made, when, 369
to particular person when, 369
definition of "array," 368
to juror for the trial of criminal action, definition of. 566
is either to the array or to a single juror, 567
to the array of jurors, may be made by the State, when, 568
may be made by the defendant, when, 569
to individual jurors are peremptory, or for cause. 570
definition of peremptory challenge, 571
number of peremptory challenges allowed to State and defendant, in capital cases, 572
in felonies not capital, 573
in misdemeanors, 573
to jurors in justices courts. 827. 828
for cause defined, 575
what are causes of, 575, 576
juror sworn to answer questions in case of. 577
duty of the court as to certain special causes of, 578
court is the judge of the qualification of jurors, 579

CHANGE OF VENUE,
for what causes may be granted to the defendant, 527
affidavit for, by whom made, 527
when granted on application of the State, 528
not to be granted to defendant until motions, exceptions, and special pleas are disposed of, 529
to what county cause shall be removed, 530. 531
duty of the clerk in case of, 532, 533
when granted, defendant to be recognized if on bail, to appear at the proper court, 534
to be removed to the proper county. if in custody. 535, 536

CHARGE,
of the court in criminal actions, 594 to 602
shall be delivered in writing, except in certain cases, 594, 599
to be confined to the law of the case, 594, 595
written charges may be asked by counsel, and shall be given.

CHARGE—(*continued.*)
modified, or refused, 596
jury may ask for further charges, 614
shall be certified and made a part of the record, 597
rule as to misdemeanors, 598, 599
only such to be read as are given, 600
jury may take copy of charges given, 601
failure to comply with requirements as to charges, good ground for reversal, 602
CHIEF JUSTICE OF A COUNTY—See *Magistrate.*
subject to removal from office for neglecting certain duties, 33
duty of, in respect to vagrants and disorderly persons, 892, 903
CHILD,
when incompetent to testify, 644
CITIZEN,
of the State, shall not be deprived of life, liberty, etc., except by due course of law, 3
CLERK OF COUNTY COURT,
shall keep in his office a list of grand jurors, selected for each term of court, 342
shall furnish to district clerk, a list of grand jurors selected, 344
CLERK OF THE DISTRICT COURT,
his general duties, 47
shall issue process, 47
shall file papers, 47
is liable to prosecution for failure to perform duty, 47
deputy may perform all the duties of, 48
shall issue writ to summon grand jurors, 345
duties of in case of change of venue, 532, 533
duties of as to special venire facias in criminal trials, 549, 553
shall issue warrant for the execution of sentence of death, 690
shall issue capias on judgment to collect fine, 700
on judgment of imprisonment, 705
shall make out certified copies of judgments, 699, 706
duties of in regard to appeals, 729 to 732, 737, 746, 754
shall report to the Attorney General as to criminal proceedings, 944, 946
costs payable to, 952, 955, 972
CLERK OF SUPREME COURT,
duty of in relation to appeals, 733, 736, 739, 753, 759
cost accruing to, 971
CODE OF CRIMINAL PROCEDURE,
its objects, 1
general provisions of, 1 to 27
divided into five parts, 56
provisions of to be liberally construed, 25
where there is a failure to provide a rule of procedure, common law to be resorted to, 27
COMMITMENT—See *Examining Court, Accused.*
after hearing before an examining court, 250 to 255

COMMITMENT—(*continued.*)
to jail of another county, 251
warrant of, 252, 253
right and liabilities of counties in respect to prisoners, 254
sheriff shall keep prisoner safely, 255
of defendant after surrender by bail, 276, 277
to jail of another county after surrender, 278
on account of failure to give bail when required, 290
defendant in such case to be discharged on giving bail, 294
by warrant of coroner, 868
of fugitives from justice, 885, 887, 889

COMMON LAW,
when to be resorted to, 27
rules of evidence of, how far applicable to criminal actions, 638
rules of, as to incompetency of certain persons, 648

COMMUTATION OF PUNISHMENT—See *Governor.*

CONFESSION,
of defendant may be used against him, when, 661, 662, 663
of slave when not to be used, 663

CONSTABLE—See *Peace Officer, Costs.*

CONSTITUTIONAL PROVISIONS,
applicable to the prosecution of offences, collected and inserted, 3 to 16
legislative construction of section 16, bill of rights, 17
of section 12, bill of rights, 18, 19, 20

CONSTRUCTION,
legislative, of section 16, bill of rights, 17
of section 12, bill of rights, 18, 19, 20

CONTINUANCE,
of criminal actions by operation of law, 513
may be granted upon application of the state or of the defendant, 514
first application for by the state, 515, 517
subsequent applications for by the state, 516, 517
first application for by the defendant, 518, 520
subsequent applications for by the defendant, 518, 520
applications for, by defendant, must be sworn to, 521
not necessary to file a written motion for, 522
application for, shall not be heard until after action upon motions, pleas and exceptions, 523
modification of the rule in cases where no service has been made of the indictment or information, 523
defendant, when entitled to be discharged on bail, in case more than one continuance has been granted to the state, and he demands a trial, 524
where more than two continuances have been granted to the state, defendant may be discharged on his individual recognizance, 525
may be granted after trial commences in certain cases, 526

CONVICT—See *Conviction, Judgment, Sentence.*
conveyed to the penitentiary, in what manner, 706, 707

CONVICTION,
where person is entitled to trial by jury, can be had only upon legal verdict or plea of guilty. 22
no person can be punished until after conviction in a court of competent jurisdiction, 17
nor subjected to second prosecution after such conviction, 18
explanation of the rule, 19
judgment upon, when rendered in case of felony, 629
defendant in case of, to remain in custody, when, 634
cannot be had on the testimony of accomplice unless corroborated, 653
judgment upon, in case of felony, 682 to 690
in case of misdemeanor, 691
enforcing judgment in case of fine, 698 to 703
in case of imprisonment in jail or the penitentiary, 704 to 707
in capital case, 708 to 717
CORONER—See *Magistrate, Inquest, Peace Officer.*
subject to removal from office for neglect of certain duties, 33
shall hold inquest, when, 851
may cause body to be disinterred, 852
shall act upon verbal or written information, 853
sheriff or prison keeper shall report to, as to person dying in prison, 854
may summon jury of inquest in person, or direct to be summoned by other officer, 855
shall proceed forthwith to the dead body, 858
oath to be administered to jury, 859
may summon witnesses, 860
shall cause testimony to be reduced to writing, 861
shall sign and certify verdict of jury of inquest, 863, 876
shall keep minute book of proceedings, 864
may issue warrant of arrest, when, 865, 872
warrant of shall be executed by peace officer, 866, 874
as to sufficiency of warrant of arrest by, 867, 873
may commit to jail person accused, 868
bail bond by, 869, 871
shall file papers with district clerk, 870
justice of the peace may act in absence of, 875
person arrested by warrant of, not to be taken from the hands of the officer by warrant from magistrate, 877
cost payable to, 965, 966
COST,
in cases of habeas corpus, 166, 758
how collected in criminal actions, 698 to 703
how regulated upon appeal on habeas corpus, 758
collection of, in justices courts, 845 to 850
taxation of, 949, 950, 951
to be paid by the state, 952 to 956
to be paid by counties, 957 to 968
to be paid by the defendant, 969 to 973
to the attorney general, 970

COST—(*continued.*)
to district attorney, 971
to clerk of the supreme court, 971
to district clerk, 972
to sheriff, 973, 977, 978
in justices, mayors and recorders courts, 974 to 978
to justices, mayors and recorders, 975
to constable, 976
to sheriff, 977
to be paid by a witness, 979
COUNTY,
when liable for costs, 957 to 968, 978
COUNTY COMMISSIONER—See *Magistrate, County Court.*
subject to removal from office for neglecting certain duties, 33
COUNTY COURT—See *Jury, Grand Jury.*
shall compensate the sheriff for expense of keeping prisoners, 41, 42, 43
duty of in respect to grand juries, 335 to 343
shall meet when, for the purpose of selecting grand jury, 335
quorum of, how constituted, 336
may meet and adjourn, 337
chief justice may appoint a time when there has been a failure to meet, 337
shall proceed, when assembled, to select grand jury, 338
character of persons to be selected by, as grand jurors, 339, 341
proceedings of to be recorded, 340
shall regulate grand jury service, how, 341, 343
duty of respecting the construction of jails. 714
duty of as to insane persons, 792, 793
duty of as to vagrants, 895 to 898
duty of as to appropriation of fines, &c.. 967, 968
COUNTY TREASURER,
drafts upon, in favor of sheriff or other officer, 964, 966, 967, 968
COURTS,
shall be open for redress of wrongs, 8
proceedings in shall be public, 23
having jurisdiction in criminal actions, 57
as to supreme court, 58
as to district courts, 59
as to justices courts, 61 to 65
as to mayors and recorders courts, 65
CRIMINAL ACCUSATION—See *Criminal Action.*
CRIMINAL ACTION—See *Limitation, Venue, Indictment, Information.*
is prosecuted in the name of the State against the party accused, 51
time within which, may be commenced, 182 to 189
proper county for the prosecution of, 190 to 208
for offence committed out of the State, when barred by former conviction, 205
when barred where different counties have jurisdiction. 206

CRIMINAL ACTION—(*continued.*)
shall be dismissed if no indictment or information is presented in proper time, 537
when district attorney may dismiss, 538
in case of persons jointly indicted, 588
evidence in, 638 to 668, 764 to 780
costs in, 949 to 979
CRIMINAL PROSECUTION—See *Criminal Action.*
DEFENDANT—See *accused.*
DEFINITION,
of words and phrases used in the Code, 49 to 55
how words are to be understood, 49, 50
of "magistrate," 52
of "peace officer," 53
of "officer," 54
of "examining court," 55
DEPOSITIONS,
when taken, 764, 765
rule as to the right of the State to cross examine, 764
as to consent of the defendant that the entire evidence shall be used, 764
may be taken before whom, within the State, 766
out of the state, 767
of non resident witness temporarily in the State, 768
rules prescribed in civil cases to apply, when, 769, 770
oath to be taken by defendant, 771
written interrogatories to be filed and served, 772
certificate of officer as to the identity of witness, 773
certificate of authentication, 774
taken before examining court without interrogatories, 775
without commission, 776
in what case the magistrate shall proceed on request to take, 776
duty of officer to attend and take deposition, 777
return of, 778
oath to be taken before reading, 779, 780
DEPUTY CLERK—See *Clerk of District Court.*
may perform any duty of his principal, 48
DEPUTY SHERIFF—See *Sheriff.*
may perform any duty imposed upon the sheriff, 46
DISORDERLY PERSONS,
proceedings against, 901 to 905
term defined, 902
how arrested, 903
punishment of, 904
may demand a jury, 905
DISTRICT ATTORNEY,
shall represent the State in all criminal cases where he has not been otherwise employed before his election, 30
shall, when in the county, represent the State before examining court, 31

DISTRICT ATTORNEY—(*continued.*)
his duty in relation to cases of habeas corpus, 156
may go before the grand jury, when, 373
shall advise the grand jury when called on, 374
may examine witnesses and advise the grand jury as to proper mode of interrogating, 375
shall propare indictments for the grand jury upon memorandum furnished by the foreman, 385, 386, 387
fees payable to as cost, 808, 971

DISTRICT COURT—See *Habeas Corpus.*
jurisdiction of, 59
jurisdiction of judge of, 60
may cause arrest of persons to prevent threatened offence, 93
may grant injunctions and orders to suppress offences of a permanent nature, 108, 113, 116
judge of may grant writs of habeas corpus, 122
duty of judge of, where application has been made for writ of habeas corpus after indictment found, 126, 127
shall grant writ of habeas corpus without delay, 131
judge of may grant writ of habeas corpus without application, 132
may issue warrant in ceriain cases of detention, 133, 151
shall allow reasonable time for production of a prisoner, 150
general duties of in relation to habeas corpus, 157 to 163, 166, 168, 170
costs in, 952 to 973

DYING DECLARATIONS—See *Evidence.*
when competent testimony, 660

ELECTIONS,
suppression of unlawful assembly, riot, and disturbances at, 106, 107

ELECTORS,
privileged from arrest, when, 11

ESCAPE,
of defendant, before or after verdict, 697
capias to be issued, 697

EVIDENCE—See *Depositions.*
General rules of
rules of the common law to govern, how far, 638
rules prescribed by statute in civil suits to govern criminal cases, how far, 639
presumption of innocence, 640
rules as to offences consisting of degrees, 641, 642
jury are judges of the facts and of the weight to be given to them, except when, 643
Persons who may testify.
enumeration of those who are incompetent, 644
1. as to insane persons, 644
2. as to children, 644
3. as to slaves and free persons of color, 644
4. as to attorney at law in case of his client, 646

EVIDENCE—(*continued.*)
court may interrogate witness as to his competency to testify, 645
husband and wife shall not testify as to certain communications 647
exception to the rule, 647
husband and wife may testify for each other, 648
husband and wife shall not testify against each other, except for offence of one against the other, 648
as to religious belief of a witness, 649
judge of the court is competent to testify, 650
when a judge shall not be required to testify, 651
judge, when a witness, may be sworn by the clerk, 652
rule as to the evidence of accomplices, 653
As to particular offences.
as to treason, 654, 655
rule where two witnesses, or one with corroborating circumstances, are required, 656
as to perjury, 657.
as to forgery, 658, 659
Dying declarations
rules as to competency of, 660
1. party must have no hope of recovery, 660
2. must be voluntarily made, 660
3. must not be made in answer to leading interrogatories, 660
4. party must be of sound mind, 660
Confessions of accused.
may be used against him, when, 661, 662, 663
1. they must have been freely made, 661
2. must have been made when under no restraint, except in particular cases, 662
3. confession of a slave shall not be used as evidence after chastisement inflicted or threatened, 663
Miscellaneous provisions relating to
where part of an act, declaration, conversation or writing is offered, 664
where a detailed act, declaration, conversation or writing is offered, 664
where an instrument is partly written and partly printed, 665
when a subscribing witness denies or does not recollect the execution of an instrument, 666
proof of handwriting by comparison, 667
in what manner a party may contradict his own witness 668
in cases before justices', mayors and recorders' courts, 837

EXAMINING COURT,
definition of the term, 55
proceedings before, 233 to 256
magistrate shall proceed to examine into the truth of the accusation, 233

EXAMINING COURT—(*continued.*)
magistrate may postpone the examination to procure testimony. 234
accused to be kept in custody during such postponement, 234
witnesses shall be examined before any statement on the part of the defendant, 235
witnesses may be put under rule, 235
person prosecuting may examine witnesses, 236
defendant or his counsel may examine witnesses, 236
if there be no counsel on either side, magistrate may examine witnesses, and defendant has the same right, 237
district attorney to be notified of the proceedings, when in the county, 237
testimony to be reduced to writing, signed and certified, 238
magistrate may postpone for further testimony, when, 239
examination to be in presence of the accused, 240
after examination of the witnesses defendant may make voluntary statement, 241, 242
voluntary statement to be reduced to writing, signed and certified, 242, 243
attachments may issue for witnesses, 244
attachments to be forthwith executed, 245
when attachments may issue for witnesses in another county, 246
when defendant is entitled to be discharged, 247, 248
no magistrate, except judges of the supreme and district courts or chief justice of a county, can discharge, without bail, in in capital case, 248
after examination defendant may be again arrested, when, 249. 256
after examination defendant shall be discharged, admitted to bail, or committed, 250
commitment by examining court where there is no safe jail in the county, 251
warrant in such case, 252
warrant of commitment, when sufficient, 253
right of recovery for expenses by the county to which prisoner is sent, 254
bail before, 284, 296
as to witnesses, 297, 298, 299
voluntary statement may be used in evidence against defendant, 662
depositions taken before, 764, 775 to 778

EXECUTION,
of judgments, 698 to 717
writ of, to enforce judgment, 701
of the penalty of death, 708 to 717
of judgments in cases tried before justices, mayors and recorders, 845 to 850

FELONY—See *Indictment, Arraignment Judgment.*
can be prosecuted only by indictment, 390
process for witnesses in case of, 436, 437

FELONY—(*continued.*)
on trials for, defendant must be present, 540
shall, in such case, be placed in custody, if on bail, 542
challenges to jurors in case of, 572, 573
judgment in case of, 682 to 690
enforcing judgment in case of felony, not capital, 706, 707
in capital case, 708 to 717
appeals in case of, 721, 731, 735, 736, 747, 748
FINES,
capias to collect, 692
execution to collect, 701
collection of, 698 to 703
forfeiture of bond in case of, 695
how defendant may be discharged from, 692, 693
appropriation of, 806, 807
duty of county court in relation to, 967, 968
fees to officers for collecting, 808
may be remitted by the Governor, 809
FORFEITURES,
of money, how remitted, 809
of land, how remitted, 810
appropriation of, 806, 807
duty of county court in relation to 967, 968
fees for collecting, 808
FORGERY,
rules of evidence in cases of, 658, 659
FREE PERSONS OF COLOR,
competent witnesses, when, 644
definition of the term, 906
cannot lawfully immigrate to or remain in the State, 907*
magistrate may issue warrant against, when, 908*
when arrested, shall be brought before the magistrate, 909*
magistrate shall order the hiring out of, for six months, 910
proceeds of hire, how disposed of, 911
may again be hired out for five years upon failing to leave the State without good excuse, 912
proceeds of second hiring, how disposed of, 913, 914
to be again warned by the sheriff to leave the State, 914
may be sold, if he fails to leave the State, without good excuse, 915
ownership of, to be fully vested in the purchaser, 916
proceeds of sale, how disposed of, 916
shall be considered and treated as a slave while hired, 917
FUGITIVES FROM JUSTICE,
from another State or Territory, to be delivered up on demand, 878
judicial and peace officers to give aid in the arrest and detention of, 879
no person shall be arrested or delivered up for an offence committed prior to February 16, 1846, 880

* *See note preceding the Index, where the mistake in numbering the Articles is explained.*

FUGITIVES FROM JUSTICE—(*continued.*)
duty of magistrates in regard to the arrest of, 882, 885, 888
complaint to procure warrant of arrest against, 883
warrant for the arrest of, 884
bail or commitment in cases of, 885, 887, 889
of the proof to be produced in cases of, 886
magistrate shall give notice of proceedings against, to the district attorney, 888
district attorney shall give notice to Governor of the State or Territory from which the defendant is charged to have fled, 888
when to be discharged after commitment or bail, 889
rule where a person has been once arrested and discharged, 890
escaping from this State, proceeding relating to, 881

GOVERNOR—See *Fines, Forfeitures, Fugitives from justice.*
may remit fines and forfeitures, 809
shall report in such case to the legislature, 809
may remit forfeitures of land, rights and privileges when, 810
may commute punishment, 811
may reprieve and delay the execution of the penalty of death, 812
duty of, in respect to fugitives from justice, 878, 880, 881, 889, 890
shall communicate to the Legislature information received relative to crime, 948

GRAND JUROR—See *Grand Jury.*

GRAND JURY—See *Indictment.*
when to be selected by the county court, 335, 337
not less than fifteen nor more than twenty to be selected as grand jurors, 338
qualifications of, 339
proceedings of the county court to be recorded, stating particularly the names of the persons selected, 340
to be composed of men of good moral character and intelligence, 341
to be distributed as to residence equally through the county, 341
names of, to be placed on a list and kept in the county clerk's office, 342
service upon, to be so regulated as to fall equally upon all citizens competent therefor, 343
list of, to be furnished to the clerk of the district court, 344
clerk of the district court shall issue writ for summoning, 345
members of, to be notified by the sheriff, 346
how organized when there is a failure to select and summon, 347
if as many as fifteen persons selected attend, the court shall proceed to impannel, 348
each member of, to be interrogated as to his qualifications, 349
questions to be asked before impannelling, 350
when a person is qualified to serve upon, 351
any person summoned who is not qualified to serve upon, to be excused, 352
if as many as fifteen of those summoned are qualified, they shall be impannelled, 353

GRAND JURY—(*continued.*)
when less than fifteen are present other persons to be summoned to supply the deficiency, 354
when by challenges less than fifteen remain, the deficiency to be supplied, 355
foreman of, to be appointed, 356
oath to be administered to, 356
to be instructed by the court as to their duties, 357
bailiffs to be appointed for, 358
bailiff to obey the instructions of the foreman, and to be in constant attendance upon, 359
a grand juror is said to be impannelled when, 360
definition of "panel," 360
when foreman of, is absent another to be appointed, 361
array of grand jurors may be challenged when, 362
causes of challenge to the array, 363
to a particular juror, 364
court shall decide summarily upon challenge, 365
when the challenge to the array is sustained another grand jury to be summoned, 366
when by challenge to particular persons the number is reduced below fifteen, others to be summoned, 367
"array of grand jurors," meaning of, 368
time for challenge to the array, 369
to particular person, 369
twelve members constitute a quorum, 370
duties, privileges and powers of, 371 to 389
after being organized, shall proceed to discharge their duties, 371
suitable place to be provided for, 371
deliberations of, shall be secret, 372
penalty for divulging secrets of, 372
district attorney may go before, when, 373
may send for the district attorney when, 374
district attorney may examine the witnesses before, 375
may advise as to the mode of interrogating, 375
may ask and receive advice from the court, 376
mode of asking advice, 376
shall meet and adjourn at what times, 377
shall inquire into all offences liable to indictment of which they have knowledge or receive information, 378
foreman of, may issue summons for witnesses, 379
witness refusing to obey summons shall be attached and taken before, 380
how witness may be compelled to testify before, 381
witness shall be first sworn not to divulge any matter of which he is interrogated, 382
as to the questions to be propounded by, 383
shall not make any general presentment upon political, moral or religious subjects, 384

GRAND JURY—(*continued.*)
after hearing all testimony which is accessible, shall vote as to presenting a bill of indictment, 385
if twelve concur in finding a bill, foreman shall furnish the district attorney with a proper memorandum, 385
memorandum furnished by the foreman shall state what, 386
indictments found by, shall be prepared by the district attorney and delivered to the foreman, 387
shall deliver indictments in open court, 388
fact of presentment by, shall be noted on the minutes of the court, 389
no objection can be heard to an indictment for want of a legal grand jury, 401
HABEAS CORPUS,
privilege of the writ under the constitution, 7
writ of, is the remedy for the suppression of offences which affect personal liberty, 117
definition and object of the writ of, 118 to 121
is an order from a court or judge of competent authority, 118
directed to a person having another in custody or under restraint, 118
commands him to produce the person detained and show cause for the detention, 118
form of the writ of, 119
not invalid for want of form, 120
every provision relating to the writ to be liberally construed to give it effect, 121
by whom granted, 122
where returnable before indictment, 123
after indictment, 124
application for the writ of, to whom made after indictment, 125
judge shall appoint a time and place for hearing the application under 126
shall fix the earliest practicable time, 127
the party detained, or any person for him, may apply for writ of, 128
definition of the word "applicant," 129
requisites of the petition for writ of, 130
writ shall be granted without delay, 131
writ of, may be issued by district judge without application, 132
warrant may be issued in aid of the remedy in certain cases, 133
judge may issue warrant of arrest against the person illegally detaining, 134
proceedings under warrant so issued, 135
powers of the person charged with warrant, 136
definition of the words, "confined," "imprisoned," "in custody," "confinement," "imprisonment," 137
of the word "restraint," 138
what cases the writ is intended to be applicable to, 139
person held as a slave, if free may be relieved under, 140
writ of, may be granted where bail is excessive or improperly demanded, 141

HABEAS CORPUS—*continued.*
person afflicted with disease may be discharged under, when, 142
service of the writ of, by whom made, 143
writ of, how served, 144
return of the writ of, by person not an officer, 145
writ to be immediately obeyed and return made, 146
nature of the return to writ of, 147
return of the writ by person detaining to be under oath, 148
person on whom the writ is served shall bring the body of the person detained, except in certain cases, 149
reasonable time to be allowed for production of the person detained, 150
where the person on whom the writ is served refuses to obey, 150
where he conceals himself or refuses to receive the writ, he may be arrested and imprisoned, 151
person refusing to obey the writ liable for damages, 152
where the writ is disobeyed, person detained may be brought by an order, 153
what is a sufficient return where person detained is not produced, 154
where prisoner in jail dies the fact to be reported to the Coroner, 155
district attorney to represent the State in cases of habeas corpus, 31, 156
when not present court shall appoint counsel for the State, 156
duty of attorney general in respect to cases of, 29
applicant under, to be discharged when, 157
where applicant stands indicted for capital offence, 158
no presumption arises against defendant who has not been indicted, 159
after hearing cause, judge or court shall either remand, admit to bail or discharge the prisoner, 160
defendant not to be discharged without bail after indictment, 160
proceedings where applicant is held under warrant informal or void, but there is probable cause for his detention, 161
applicant not to be discharged without bail in any case where probable cause is shown against him, 162
court or judge may summon the committing magistrate and cause the papers and proceedings to be produced, 163
no written issue necessary in cases of habeas corpus, though such issue may be made, 164
where there is no issue in writing it shall be deemed that the return is contested by denial of the same, 164
applicant has the right by himself or counsel, to open and conclude the argument, 165
costs in cases of habeas corpus to be regulated by the judge, 166
proceeding under, how to be recorded or kept, 167, 168, 169
court or judge granting the writ may make all necessary orders concerning testimony, 170
the word "return" in what sense used, 171
rule as to imprisonment or detention after a discharge under, 172
defendant if arrested after indictment when he has been discharged or bailed before, shall be again entitled to the writ, 173
judgment in habeas corpus final upon hearing after indictment, 173, 174

HABEAS CORPUS—(*continued.*)
exception to this rule, 175
rule where there has been an appeal to the supreme court, 176
disobedience of the writ or delay of service or return by an officer, 177
refusal to obey or evasion of the writ by any person having another under detention, or removal of the person held, 178
refusal of jailor or sheriff to furnish copy of the process under which he holds a prisoner, 179
rule as to persons held in custody under the authority of the United States courts or in the army, 180
cases to which the remedy here provided is applicable, 181
in the case of fugitives from justice, 890
appeal upon, 754 to 763
of the transcript on appeal, 754
hearing on, 755, 757
to be revised upon merits only, 756
as to costs, 758
judgment to be final, 759
penalty for disobeying mandate, 760
rule where person is detained by one, not an officer, 761
defendant need not be present at the hearing, 762
rule where applicant is held to bail, 763
HANDWRITING,
proof of, by comparison, 667
HIGHWAY—see *Public Highway.*
HUSBAND AND WIFE,
shall not testify as to communications made by one to the other, except in special cases, 647
cannot be witnesses against each other, except in prosecutions for offences committed by one against the other, 648
may be witnesses for each other in all cases, 648
INDICTMENT—See *Grand Jury, Limitation, Venue, Pleading in Criminal Actions.*
within what time to be presented, 182 to 187
when considered as presented, 188
allegations of, when offences are committed on, or near the boundary of a county, 191
when offence is committed on a stream or highway, the boundary of two counties, 197
rule as to allegation of, in particular cases, 207
to be prepared by district attorney, 385, 386, 387
all felonies shall be presented by, 390
all misdemeanors may be presented by, 391
offences to be presented either by indictment or information, 392
exception to the rule, 392
defined, 394
when deemed sufficient, 395
need not state what is not necessary to be proved, 396
words of, to be construed according to their usual meaning, except where words or phrases are specially defined, 397

INDICTMENT—(*continued.*)
certainty which is required in, 398
statement of, as to particular intent, 399
allegation of, where the district court of more than one county has jurisdiction, 400
cannot be objected to for want of legal grand jury, 401
rule where a fictitious name is given to the defendant, 405
accused to be served with a copy of, when, 458, 459, 460
no arraignment of accused until after service of, 463
purpose for which service of, takes place, 464
INFORMATION—See *Limitation, Venue, Pleading in Criminal Actions.*
within what time to be presented, 186, 187
when considered as presented, 189
allegations of, when offences are committed on, or near the boundary of a county, 191
on a stream or highway, the boundary of two counties, 197
rule as to allegation of, in particular cases, 207
misdemeanors may be presented by, 391
all offences must be prosecuted either by indictment or information, 392
exception to the rule, 392
defined, 402
when sufficient, 403
shall not be presented, except upon the oath of some credible person, 404
as to fictitious name assigned to defendant, 405
governed by certain rules applicable to indictments, 406
INJUNCTION,
in respect to obstruction of public highway, 113, 114
to restrain the carrying on of trade injurious to health, 108
INQUEST—See *Coroner.*
shall be held by the coroner, when, 851
dead body may be disinterred for the purpose of holding, 852
jury of, may be summoned by the coroner in person, or by a peace officer, 855
jury of, consists of six persons, freeholders or householders, and citizens of the proper county, 856
person summoned on jury of, may be fined for non-attendance, 857
coroner shall proceed with jury of, to the place where the dead body may be, 858
oath of jury of, 859
coroner may enforce the attendance of witness upon, 860
testimony at, to be reduced to writing, 861
may be held in private, 862
how to be conducted in respect to the examination of witnesses, 862
after examining into the cause, manner, time, and place of the death, verdict shall be rendered, 863
verdict at, to be signed by coroner and the jurors, 863
proceedings upon, shall be noted in a book by the coroner, 864
person accused of the offence of killing, may be arrested by warrant from the coroner, before inquest, 865

INQUEST—(*continued.*)
accused person has the right to be present at, 865
coroner's warrant shall be executed by any peace officer, 866
as to the requisites of warrant, 867
coroner may commit to jail when the evidence is sufficient, 868
may take bail, 868
bond when sufficient, 869
coroner shall file papers relating to inquests, 870
recovery upon bail bonds taken by coroner, 871
person not in custody, may be arrested by warrant after verdict of jury of inquest, 872
requisites of warrant issued by coroner, 873
warrant shall be forthwith executed, and accused taken before a magistrate, 874
justices of the peace may hold, in certain cases, 875
coroner or justice shall certify to the verdict of jury of inquest, 876
rule as to arrest by magistrate of accused person pending inquest, 877

INSANITY.
acquittal on the ground of, 636
of a defendant pleading guilty, 637
renders witness incompetent to testify, 644
when suggested as a reason why sentence should not be pronounced, 688
defence of, may be considered under the plea of "not guilty," 497
of defendant after conviction, how inquired into and effect of, 781 to 793
jury to be summoned, 781, 783
information as to, may be given on oath. by any respectable person, 782
no special formality required on trial, 784
each party entitled to six peremptory challenges, 785
defendants' counsel may open and conclude, 786
court to appoint counsel when defendant has none, 787
judgment of conviction to be suspended when, 788
execution of judgment to be suspended when, 789
judgment to be rendered against defendant when, 790
execution of judgment to follow when, 791
duty of the county court as to insane persons, 792, 793
order of the district court in cases of, 793

JAIL.
sheriff is the keeper of, and responsible for prisoners, 37
may appoint a jailor, 40
how compensated for keeping prisoners in, 41
may rent house and employ guard, where there is no jail, 43
defendant may be committed for refusing to give bond, in case of threatened offences, 82
duty of sheriff when accused is committed to, 38
commitment, under capias, 428, 431, 433, 434
in proceedings before justices, mayors, and recorders, 844, 848
as to confession made, when the party is confined in, 662
penalty of death to be executed within, when and how, 710, 711, 712
duty of county courts as to the construction of, 714

JAILOR—See *Sheriff. Jail*
may be appointed by the sheriff. 40
JUDGMENT—See *Arrest of Judgment.*
in cases of habeas corpus, how far conclusive, 172 to 176
of death, not to be rendered, except on verdict, 477
not to be rendered against defendant, when his motion or plea is overruled, but he may plead not guilty after decision of such motion or plea, 512
upon acquittal, to be entered immediately, 629
upon conviction, when entered in case of felony, 629, 682
in case of misdemeanor, 691
defendant on conviction shall remain in custody to await, 634
arrest of, 675 to 681
enforcing, in case of misdemeanor, punishable by fine, 693, 694, 695, 697 to 702
in case of misdemeanor punishable in whole or in part by imprisonment, 696, 697, 704, 705
of supreme court, on appeal, 734, 735, 736, 738, 742, 744
on appeal in case of habeas corpus, 756, 759, 763
in justices', mayors', and recorders' courts, 845
how enforced, 846 to 850
JURISDICTION—See *Pleadings in Criminal Actions, Trial.*
of supreme court, 58
of district courts, 59
of district judge, 60
of justices', mayors', and recorders' courts, 13, 14, 61 to 65
JURY—See *Gran. Jury, Trial, Verdict, Challenge.*
trial by, to remain inviolate, 9
after verdict of "not guilty" by, accused person shall not be again tried for the same offence, 9
province of, in case of libel, 10
formation of, for the trial of criminal causes, 548 to 565
oath of petit jury in criminal case, 563
challenges to jurors, in criminal actions, 566 to 579
trial before, 580 to 637
are exclusive judges of the facts in all cases, 593, 643
are not judges of the law in any case, 593
in justices', mayors', and recorders' courts, 826, 827, 828, 832, 834, 839, 842
of inquest, 856 to 859, 862, 863, 876
liability of counties for expense of, in criminal action for felony, 958, 959
sheriff shall, in such case defray expense, and be remunerated by county, 961
JUSTICES' COURTS,
jurisdiction of, 61, 63, 64
have concurrent jurisdiction with district court in certain cases, and exclusive jurisdiction in others, 62
may sit at any time to try criminal case, 65
proceedings before, in cases which they have jurisdiction to try, 813 to 850

JUSTICES' COURT—(*continued.*)
justice shall keep a book in which to record proceedings before him, 817
attorney appointed for county may prosecute before, 818
warrant, to be issued when, 819, 820, 821
complaint to be reduced to writing and filed, 820
warrant to be executed by any peace officer. 822
cause shall be tried without delay, 823
postponement, when granted, 823
defendant may be required to give bail, or committed when, 823
complaint and warrant to be read to defendant, or the accusation to be stated to him, 824
defendant not to be discharged on account of any informality, 825
jury to be summoned, 826
challenges allowed, 827, 828
as to the pleadings, 829, 830, 831
rule where defendant pleads guilty, 832
rule where defendant refuses to plead, 833
oath of jurors, 834
examination of witnesses, 835
as to counsel and order of argument, 836
rules of evidence, 837
disposition of the jury, 838
jury discharged, when, 839
adjournment or trial before another jury, 839
bail may be required in case of adjournment, 840
bail bond, how recovered in such case, 841
as to the verdict, 842, 843
defendant retained in custody to be securely kept, 844
form of judgment of conviction, 845
defendant may be discharged, how, 846, 848
as to bonds taken in satisfaction of judgment, 847
execution to be issued on judgment, 849
peace officer bound to execute all process from justices, 850
costs in, 874 to 878

JUSTICE OF THE PEACE—See *Justices' Courts, Magistrate.*
constitutional provision relating to criminal jurisdiction of, 13, 14
subject to removal from office for neglecting certain duties, 33
duty of, in absence of coroner, 875, 876
duty of, in respect to slaves who hire their time, or are hired to other slaves, or to free persons of color, 923 to 926, 942, 943
shall make report relative to criminal proceedings, 946
taxation of cost by, 949, 950, 951
cost accruing to, 965, 975, 978

LEGISLATURE,
members of, privileged from arrest in what cases, 12
construction by, of section 16, bill of rights, 17
of section 12, bill of rights, 18, 19, 20

LEGISLATURE—(*continued.*)
cannot deprive slaves of the right of trial by jury, in certain cases, 16
Governor shall report to, concerning remission of fines and forfeitures, 809
Governor shall remit forfeitures of land, when memoralized by, 810
LIBEL,
province of the jury in case of, 10
proceedings to prevent the publication or circulation of, 95
on conviction for selling and publishing, court may order copies which remain, to be destroyed. 116
LIBERTY—See *Personal Liberty, Habeas Corpus.*
LIMITATION,
as it effects criminal actions, 182 to 189
of prosecutions for murder, 182
forgery, 182
theft punished as felony, 183
arson, 183
burglary, 183
robbery, 183
counterfeiting, 183
rape, 184
all other felonies, 185
misdemeanors, 186
time of the absence of defendant from the State, not to be computed in the period of, 187
indictment considered as presented when, 188
information when, 189
MAGISTRATES—see *Arrest, Bail, Commitment. Riot, Unlawful Assembly.*
who are, 52
to perform certain duties, 32, 33
to preserve the peace, 32
to issue process, 32
to cause the arrest of offenders, 32
penalty for failure on the part of, to perform certain duties, 33
shall interfere to protect any person or property against threatened injury. 73, 74, 75
1. by giving notice to a peace officer, 73
2. by verbal order or warrant to peace officer, 74, 75
3. by arresting the offender, 75
4. by requiring security. 76
to issue warrant of arrest for the prevention of offences upon information, 80, 83
to hear proof in such case, 81
to require bond to prevent offence, 81
may commit to jail in such case, when, 82
as to the sufficiency of the warrant and bond, 83, 84
may discharge the defendant, when, 85, 86
duty of, in taking bonds to prevent offences as to amount of, 90
shall require bail bond when the life of a person has been threatened, 91

MAGISTRATES—*continued.*

may direct peace officer to protect the person or property of one threatened, 92
may require bond of a person charged with libel, 95
bond in such case, how enforced, 95
duty of, in suppressing riots, 99
may appoint special police to prevent disturbances, &c., at elections, 106, 107
duty of, as to issuing warrants of arrest, 215 to 232
in what cases they may issue warrants of arrest, 217, 218
may endorse warrant when issued in another county, 222
may appoint persons to execute warrants, 223
proceedings before, while sitting as an examining court, 233 to 256
shall examine truth of the accusation, 233
may postpone examination, when, 234, 239, 246
may place witnesses under rule, 235
may examine witnesses, 237
shall certify the proceedings, 238, 295, 296
duty of magistrate as to voluntary statement of the defendant, 241, 242, 243
may issue attachment for witnesses, 244, 246
may discharge or bail, when, 248, 249
warrant of commitment by, 251, 252, 253, 290
discharge by, 250
admitting defendant to bail, 250, 284 to 296
shall cause bail bond to be prepared, 291
may require bail of witnesses, 297, 298
duties of, in respect to search warrants, 300 to 334
shall issue search warrants, when, 306, 307, 308
may also issue order of arrest at the time of issuing search warrant, 309
may direct a time under three days for the execution of search warrant, 319
how he may dispose of stolen property taken under search warrant, 322 794 to 805
trials before, in case of search warrant, 330
may require person accused in such case to give bail, 331
may discharge defendant, 332
shall keep a record of proceedings under search warrant and certify to and file the same with district clerk, 334
duty of, in respect to fugitives from justice, 878 to 890
duty of, in respect to stolen property, 794, 797, 798, 805
duty of, with respect to warrants from, and proceedings before coroners, 874, 877
duty of, with respect to vagrants, 892 to 896, 900
duty of, with respect to disorderly persons, 901 to 905
duty of, with respect to free persons of color, 908, 909, 910, 915*

* See note preceding the index.

MARRIED WOMAN—see *Husband and Wife.*
cannot be surety on bail bond or recognizance, 269
if she is the accused party the obligation is nevertheless good against the principal and surety, 269
MAYORS AND RECORDERS—see *Justices' Court*
jurisdiction of, 65, 813
proceedings before governed by the same rules as are prescribed for justices' courts, 814
concurrent jurisdiction of, with justices, 815
warrant of, to whom directed, 816
shall keep a book in which to record proceedings before them, 817
Rules regulating proceedings before,
as to arrests, 819 to 822
as to trials before, 823 to 844
as to judgment and execution, 845 to 850
duties of in respect to slaves who hire their time or are hired to other slaves or to free persons of color, 923 to 926, 942, 943
taxation of cost by, 949, 950, 951
costs accruing to, 975, 978
MILITARY,
may be called out to suppress riot and unlawful assemblies, 96, 98, 104
and to aid in executing process 96, 98
to obey the orders of the civil officer, 104
arms to be resorted to, when, 104
if wantonly used constitutes an offence, 105
MINOR—see *Child.*
cannot be surety on bail bond or recognizance, 269
if the accused party, however, the obligation is good against both principal and surety, 269
MISDEMEANOR—see *Indictment, Information*
may be prosecuted either by indictment or information, 391
process for witnesses in case of, 440
when defendant may be tried for in his absence, 541
challenges to jurors in case of, 574
judgment in case of, 691
proceedings after judgment in case of, 691 to 705
appeal in case of, 722, 730, 734, 749
NEW TRIALS,
definition of, 669
shall not be granted upon verdict for defendant, 670
must be applied for within that time, 671
exception to the rule, 671, 688
may be granted for what causes, 672
when refused, statement of facts to be drawn up and certified, 673
effect of, 674
rule as to motion for, when there are not two days of the term of court remaining, 684
where less than six hours of the term remain court shall sit on Sunday to hear, 685
effect of, when awarded by the supreme court, 750

OATH,
to be taken by surety to bond for prevention of offences, 90
to be made by some credible person in cases prosecuted by information, 404
of grand jurors, 356
of jurors in the trial of criminal actions in the district court, 563
of jurors in justices', mayors' and recorders' courts, 834
of jury of inquest, 859

OFFENCES—See *Magistrate—Peace Officer.*
no person to be put in jeopardy twice for the same offence. 9, 18
may be prevented, how, 66, 68
rules as to prevention of, by resistance, 66, 67, 68
resistanee must be proportioned to injury, 69, 70, 72
person other than the party about to be injured may prevent, 71
duty of magistrates in preventing, 73 to 77
duty of peace officer in preventing, 77, 78, 79
magistrate shall issue warrant for the purpose of preventing when, 80
proceedings before magistrate when defendant is brought before him, 81 to 95
suppression of such as are in their nature permanent, 108 to 181
of such as affect public health, 108, 109, 110
of such as are injurious to property of the pdblic, 111 to 115
of such as affect reputation, 116
of such as affect personal liberty, 117 to 181
shall be prosecuted by indictment or information except in certain special cases, 392
which consist of different degrees, 631
verdict in such cases, 630, 641
rule where on trial defendant is convicted of a lesser degree, 642
jury are bound to acquit in certain cases where instructed, 656

OFFICER—See *Magistrate—Peace Officer—Sheriff.*
who are included in the general term, 54
refusal to execute process in cases of habeas corpus, 177
delay of service by, in such cases, 177
refusal of, to furnish copy of process under which he holds prisoner, 179

PARDON,
may be offered as a reason why sentence should not be pronounced, 688

PEACE OFFICERS—See *Riots—Arrests.*
who are, 53
general duties of, 34
punishable for neglect of duty, 35
to execute warrant of arrest, 36
may summon aid when resisted in the execution of process, 44
person so snmmoned bound to obev and liable to prosecution for failing, 45
duty of in preventing offences, 77, 78, 79
in case of threats, 77
where about to be committed in his presence, 78

PEACE OFFICERS—(*continued*)
conduct of, in preventing offences, 79
may be required by magistrate to protect persons or property threatened, 92
duty of, in suppressing riots, 96, 99 to 102
may arrest without warrant when, 209 to 214
duties of, in executing warrant of arrest, 226, 230, 239 to 243
duties of, in respect to coroners' inquests, 666, 676
bound to execute process from justice of the peace, 668, 682
duty of, in respect to fugitives from justice, 672, 680, 684
duty of, in respect to vagrants, 684
duty of, in respect to disorderly persons, 686
duty of, in respect to slaves who hire their time, or are hired to other slaves or free persons of color, 962, 964
costs accruing to, 962, 964, 976, 978
PENAL CODE,
words used in this Code in the same sense as in the Penal Code, 30
PENAL LAW,
in what sense the term is used, 206
PERJURY,
rules of evidence in cases of, 667
PERSONAL LIBERTY—*See Habeas Corpus.*
suppression of offences against, 117 to 151
writ of habeas corpus, the remedy for offences which affect, 117
PLEADINGS IN CRIMINAL ACTIONS,
on the part of the State, 451
on the part of the defendant, 452
motion to set aside indictment or information on what causes based, 453
special pleas, nature of, 454
special plea to be sworn to, 455
plea to the jurisdiction tried by the court, 456
exception to indictment or information, nature of, 457, 458
must be in writing when, 459
rules as to time of filing, 460 to 466
two days allowed for filing in capital cases after service of copy of indictment, 464, 469
may however be filed at any time before arraignment, 465
when filed shall be heard and determined before arraignment, 467
counsel appointed to defend shall have additional time to file, 467
as to plea of guilty or not guilty, 472 to 477, 469
plea of "not guilty" to be made orally, 467
evidence under plea of not guilty, 497
argument and decision of motions, pleas and exceptions, 498 to 513
shall be decided upon when, 498, 499
order of argument, 500
as to procuring testimony, 501
as to matters which are to be decided by the judge, 502
as to matters proper for the decision of the jury, 503

PLEADINGS IN CRIMINAL ACTIONS—(*continued.*)
where motion or exception is sustained, rule as to discharge or detention of the defendant, 504 to 507
where exception relates to form of the indictment or information, 508
district attorney may file exception to plea, 509
rule where no exception is taken, 510
as to plea of former conviction before justice of the peace who had no jurisdiction, 511
when plea is overruled defendant may plead not guilty, 512
no application for continuance to be heard until written pleadings are disposed of, 523
venue not to be changed until after written pleadings are disposed of, 529
finding of the jury upon special pleas, 626
PRESUMPTION,
of innocence, 640
PREVENTION OF OFFENCES—See *Offences—Magistrate—Peace Officer.*
by the act of a private person, 66 to 72
by the acts of magistrates and other officers, 73 to 107
proceedings before magistrates for the purpose of preventing offences, 80 to 95
PRISONER—See *Habeas Corpus—Jail—Sheriff—Commitment.*
shall be bailable when, 6
dying in jail shall be reported by the prison keeper to the coroner, 155, 854
PROCESS—See *Writs and Process.*
when officer authorized to execute is resisted, 96, 97, 98
citizens and military may be called to aid in executing, 96
misdemeanor to refuse aid, 97
governor may call upon military to aid in executing, 98
PROPERTY—See *Stolen Property.*
PROSECUTION—See *Criminal Action.*
to be carried on in the name and by the authority of the State and conclude "against the peace and dignity of the State," 15
of slaves, constitutional provision as to the right of jury, 16
to be dismissed where defendant is not indicted or information presented at the proper term of court, 537
PUBLIC HEALTH,
suppression of offences which affect, 108, 109, 110
injunction may be obtained to restrain the carrying on of trade injurious to, 108
district court may order the destruction of unwholesome food, drink or medicine, 108
bond may be required to cease occupation injurious to, 108, 109, 110
PUBLIC HIGHWAY,
obstruction of, 112
may be ordered to be removed by district judge, 113
right of the defendant charged with obstructing, after accquittal, 114
order of the county court respecting, 115

PUBLIC PROPERTY,
suppression of offences which are injurious to, 111 to 115
obstructing the use of public building, 111
obstructing public highway, 112
obstruction of, may be removed by order of the district court, 113
right of the defendant when acquitted, 114
as to the order of the county court in regard to public highway, 115
RECOGNIZANCE—See *Bail.*
definition of, 259
when sufficient, 263
what is implied by the word bail, 262
how construed as to the time of appearance by defendant, 267
rule as to minors and married women, 268
oath to security upon, 271
certain property not liable to debt on, 270
in case of surrender by bail, 274, 280
sureties on, to be severally bound, 281
liabilities of those who do not surrender, 282
how forfeited and recovered, 407 to 417
on appeal, 722, 723
to be forfeited how, 749
appropriation of money collected under, 806
duty of the county court in respect to, 967, 968
fees to officers for collecting, 808
RECORDERS—See *Mayors and Recorders.*
RELIGIOUS BELIEF,
competeney of witness, how affected by, 649
REPORTS RELATIVE TO CRIME,
duty of the clerk in respect to, 944
of Attorney General, 945, 947
of justices of the peace, 946
of the Governor, 948
REPRIEVES—See *Governor.*
RIOTS,
suppression of, 96 to 107
officer may require aid of citizens and of the military, when he apprehends resistance, 96
misdemeanor to refuse to obey in such case, 97
governor may order the military to aid in executing process, 98
duty of magistrates and peace officers in the suppression of. 99
arrest of persons engaged in, 99
officer may call in aid the power of his county to suppress, 100
justice of the peace, mayor or peace officer, failing to suppress, 101
what measures may be adopted to suppress, 102
conduct of military in suppressing, 104, 105
SEARCH WARRANT,
shall not issue except under certain restrictions, 5
people to be secure from unreasonable searches and seizures, 5
definition of the term, 300

SEARCH WARRANT—(*continued.*)
for what purposes may be issued, 301
to search for and seize stolen property, for what purpose designed, 302
term "stolen" defined, 303
to obtain property illegally acquired in any other manner except by theft, 304
rules as to procedure where the property was acquired by other means than theft, 305
to search for and seize stolen property concealed at a particular place, when issued, 306
to discover and seize stolen property not alleged to be concealed, when to be issued, 307
to search place suspected to be one where stolen goods are commonly concealed, when to be issued, 308
magistrate, at the time of issuing, may also issue warrant of arrest for the person accused, 309
may, in addition to commanding a seizure of the property, also require the accused person to be arrested, 310
to seize property stolen and concealed, when deemed sufficient, 311
to search suspected place, when deemed sufficient, 312
of the execution and return of, 313 to 321
sheriff shall execute forthwith, 313
to be executed only in the day time, 313
to be executed only by sheriff or his deputy, 313
in the execution of, the officer may call aid, 314
officer shall give notice of his purpose to the person having charge of the property, or who is an inmate of the place, 315
of the force which may be used, 316
when an officer may break down a door or window of a house to be searched, 317
must be executed within three days from its issuance, or within a shorter period when so directed, 319
when property, &c, is seized, shall be taken before the magistrate, 318
officer shall also arrest any person whom he is directed to arrest under, 318
when property, &c., is taken, officer shall receipt therefor, 320
when returned, shall be endorsed, how, 321
officer shall deliver to the magistrate inventory of property, &c., taken into his possession, 321
proceedings on the return of, 322 to 334
property taken by virtue of, how disposed of, 322, 794 to 805
arms, ammunition, or implements to aid in the commission of offences, how disposed of, 323
schedule of such arms, ammunition or implements, to be furnished, 324
arms and ammunitions to be forfeited to the State, 325
implements for counterfeiting or forging, to be destroyed, 326, 327
when the implements do not appear to be designed for forging or counterfeiting, 328
investigation as to the character of the articles seized, 329
on the return of, magistrate shall proceed to trial as in other cases, 330

SEARCH WARRANT—(*continued.*)
when the person arrested may be required to give bail, 331
when the accused may be discharged, 332
requisites of bail bond taken in such cases, 333
magistrate shall keep a record of proceedings under, and file with the clerk of the district court, 334
SENTENCE,
when pronounced and how, 682. 683, 684, 686 to 690
where no new trial is granted nor appeal taken, nor judgment arrested, 682
in case of appeal, 683, 747, 748
where conviction takes place too late for motion in arrest of judgment or for new trial, 684
in case of failure to enter judgment on verdict, 686
question to be asked defendant, 687
reasons which may be given why sentence should not be pronounced, 688
of death not to be executed within thirty days, 689
warrant to be issued upon sentence of death, 690
SEVERANCE,
shall be allowed at the request of a defendant, 587
SHERIFF—See *Peace Officer*, *Officer*, *Habeas Corpus*, *Search Warrant*.
is the keeper of the jail and responsible for the safety of prisoners, 37
shall place in jail every person committed by lawful authority, 38
shall notify district attorney of prisoners in his charge, 39
may appoint a jailor who shall also be responsible for the safe keeping of prisoners, 40
to be paid by the county court for keeping prisoners, 41
to be allowed compensation for guards employed, 42
may rent a room where there is no jail, and employ guard, 43
his deputy may perform any duty imposed on the sheriff, 46
duties of in respect to the writ of habeas corpus, 177, 179
shall keep safely all prisoners committed to his custody, 255
shall use no cruel means, 255
may summon guard, when, 255
duty of when a person is surrendered by his bail, 274 to 280
when he may take bail bond, 275, 279, 290, 294
when he cannot take bail bond, 280
when defendant is to be taken before a court in session, 274, 280
when defendant is to be taken before a magistrate, 277
sheriff or his lawful deputy only, can execute search warrant, 313
his duties in respect to the execution of search warrants, 313 to 321, 324, 326, 327
to report to district attorney as to implements for forging or counterfeiting, seized by him, 332
shall summon grand jurors, in what manner, 346
shall provide a place for the session of the grand jury, 371
arrest by, under capias, 418, 419, 422, 423, 425, 427, 428, 431 to 434
bail taken by, in case of arrest under capias, 424, 426, 429, 432

SHERIFF—(*continued.*)
duty of, in case of change of venue, 535
duties of, in respect to coroner's inquests, 854, 866, 874
duties of, as to summoning jury in criminal cases, 551, 552, 553
duties of, as to the treatment of juries in criminal trials, 606 to 609
duty of, as to execution of judgments, 692, 696, 698 to 707
in misdemeanor where fine is imposed, 692, 698 to 703
in misdemeanor punished by imprisonment, 696, 704, 705
in felony less than capital, 706, 707
in capital felony, 708 to 717
duty of, in respect to stolen property, 796, 798 to 802, 805
duty of, in respect to free persons of color, 910 to 916
duty of, in respect to slaves who hire their time or are hired to other slaves or to free persons of color, 922, 927 to 938
costs to be paid to, by the State, 952, 955, 956
by counties, 957 to 964, 967, 968, 978
by defendant, 976, 977, 978

SLAVE,
right of to trial by jury secured under the constitution, 16
may be witness when, 644
confession of cannot be used when, 663
cannot lawfully hire his time, nor be hired to any other slave, or to a free person of color, 918
definition of "master" of, 919
definition of the term "hire his time," 920
may be allowed to go at large for one day in search of employment, 921
peace officer shall arrest when, 922
other person may arrest when, 922
may be arrested by order of any justice, mayor or recorder, 923
when arrested shall be taken before justice, mayor or recorder, 924
jurisdiction of justice, mayor and recorder, defined, 924
justice, mayor or recorder shall proceed forthwith to examine into the case, 925
shall commit when, 925
shall assess what fine, 926,
master of shall be notified of the proceeding, 926
may be discharged when, 927
shall be hired for thirty days in what case, 928
hirer of, shall be entitled to services, and may exercise the right of of ownership, 929
shall be delivered to master when, 930
may be hired for twelve months when, 931
shall be delivered to master after second hiring in what case, 932
may be sold when and in what manner, 933, 935
master may demand and take slave before sale upon what terms, 934
disposition of money received for hire or sale of, 936
compensation to the sheriff, 937
sheriff may require person applying for slave to establish his right by suit, 938

SLAVE—(*Continued*)
rule in such case, as to damages against Sheriff, 938
ownership of, may be established before the county court after sale, 939
definition of term "owner," 940
demand for, may be made by agent of the master or owner, 941
proof required in proceeding against, 942
rule as to proceeding when it appears that the person arrested is a free person of color or runaway, 943
STATEMENT OF FACTS,
how agreed upon and prepared in criminal cases, 604, 673
STOLEN PROPERTY,
definition of "stolen," 303
disposition of, 322, 794 to 805
shall be held by the officer subject to the order of the proper court or magistrate, 794
to be restored, on trial for theft to the proper owner, 795
schedule of to be filed by officer, 796
may be restored to the owner by order of magistrate when, 797
when delivered, bond may be required of the person receiving, 798, 799
if not claimed within six months how disposed of, 800
advertisement relative to, 801
how disposed of, when it consists of money, 802
owner of, may present his claim to the county court, 803
written instrument stolen to be filed with district clerk, 804
owner may establish his claim to stolen instrument how, 804
provisions relating to, apply also to property, otherwise acquired in violation of the penal law, 805
SUBPŒNA—See *Witness*.
definition of, 438
may be issued to any county, 435
when a witness shall be presumed to disobey, 441
refusal to obey, by witness how punished, 444, 445
oath to be made before fine is entered for disobedience to, 446
rule as to fines, 447, 448, 449
SUPREME COURT—See *Appeal*.
original jurisdiction of, in criminal actions, 58
appeals to, regulated, 718 to 763
appeals to may be taken when, 718, 719
transcripts how sent up to, 730, 731
judgment in favor of the State when affirmed upon certificate, 734
in favor of defendant when affirmed upon certificate, 738
proceedings when an appeal has been taken by defendant, in case of felony, and no transcript is filed, 735
no judgment against defendant in case of felony, to be affirmed except upon the record, 736
appeals to, how docketed, 739
defendant need not appear in, but may when not committed, 740
shall hear appeals at the earliest practicable time, 741
judgment of, on appeal, 742, 744

SUPREME COURT—(*Continued.*)
mandate to be sent when, 743
may make rules of procedure, 745
new trial awarded by, effect of, 750
motion in arrest of judgment sustained by, effect of, 751
reversal in favor of the State, effect of, 752
reversal and dismissal, effect of, 753
appeal to, in case of habeas corpus, 754 to 763
transcript how prepared and sent, 754
to be considered upon the record, 755
to be revised on merits only. 756
when to be heard, 757
as to costs, 758,
judgment shall be final, 759
penalty for refusing to obey mandate, 760
rule where the unlawful detention is by some person not an officer, 761
defendant need not be personally present, 762
rule where bail is ordered to be given, 763
costs in, 970, 971
SUPPRESSION OF OFFENCES—See *Offences, Libel Riot, Public Health, Habeas Corpus.*
SURETY—See *Bail, Bail Bond.*
to be severally bound in all cases, 281
to bond for prevention of offences, 87 to 90
how sued, 88
to make oath as to the value of his property, 90
may free himself of liability now, 89
to bail bond or recognizance how recovered against, 266, 407 to 417
on what day of the term forfeiture may be taken, 407
mode of taking forfeiture, 408
sureties to be cited before final judgment, 409, 412
shall answer in writing, 410
failing to answer judgment shall be entered, 412
causes which exonerate surety, 413
1. **death of the principal**, 413
2. **sickness of the principal, or some uncontrolable circumstance preventing his attendance**, 413
3. **failure to present indictment or information against principal**, 413
rule as to second cause above mentioned, 414
judgment against may be set aside or reduced in amount when, 415
final judgment to be rendered against when, 416
executions upon judgments against, 416
THEFT—See *Stolen Property.*
all persons have a right to prevent the consequences of, by seizing property, 94
disposition of stolen property, 781 to 793
THREATS—See *Offences, Prevention of Offences, Magistrate, Peace Officer.*

THREATS—*continued.*
to commit offences, duty of of magistrates and peace officers in respect to, 73, 75, 76, 77, 90 to 92
of district court, 93
against the life of a person, 75, 91
TESTIMONY—See *Evidence.*
TREASON,
rules of evidence in cases of, 654, 655
TRIAL,
of issues of fact shall be by jury of twelve, 539
when defendant must be present at, 540
of cause in absence of defendant, 541
defendant when on bail in case of felony shall be placed in custody before the trial commences, 542
rule as to the responsibility of bail in case of mistrial, 543
before trial defendant required to plead whether he is guilty or not, 546
definition of term "called for trial," 547
formation of jury for, 548 to 565
district attorney may obtain order for special venire facias, 548
writ to be issued to the sheriff, 549
court shall instruct the sheriff as to summoning jury, 550
misconduct of the sheriff in summoning jury, 551
sheriff shall forthwith proceed to summon jury, 552
clerk shall furnish list of jurors to sheriff, who shall deliver a copy to the defendant, 553
defendant shall not be brought to trial until he has had one day's service of a copy of the list of jurors, 554
list of jurors to be called when the trial is to commence, 555
order of calling the list of jurors, 556, 565
attachment may issue for absent juror, 557
person not present at the commencement of the trial may be impannelled if he afterwards appears, 558
juror to be interrogated touching his qualifications, 559
rules governing capital cases with certain exceptions applicable to other felonies, 560
special venire facias in case of felonies less than capital, 561
as to furnishing list of jurors in cases not capital, 562
oath to be administered to juror, 563
when court may direct jurors to remain in attendance for other trials, 564
order of, 580
discretion of the court as to admitting witnesses at any stage of, 581
as to placing witnesses under rule, 582, 583, 584
as to the order of argument, 585, 586
severance upon, 587
dismissal as to one or more defendants, 588
jury may be directed to acquit when, 589
where it appears the court has no jurisdiction, 590, 591, 592
jury are judges of the facts, but not of the law in any case, 593

TRIAL—(*continued.*)
judge shall deliver a written charge when, 594, 598
judge shall not discuss the facts nor use any argument to arouse sympathy or excite passion of jurors, 595
counsel may ask instructions in writing, 596
duty of the court as to charges asked, 596
charges to be certified to, 597
verbal charge, when allowed, 599
judge shall read only such charges as are given, 600
copy of charges given may be furnished the jury at their request, 601
cause shall be reversed for departure from certain requirements, 602
as to bill of exceptions, 603
as to statement of facts, 604
jury when permitted to separate, 605
jury shall be provided with suitable room, 606
no conversation allowed with jury, 607
jury shall be attended by bailiff, 608
officer not permitted to be in the room with jury, 609
papers to be taken by the jury when they retire, 610
jury shall appoint a foreman, 611
as to communication between the court and jury, 612, 613
as to further instruction asked by jury, 614
where there is a disagreement between jurors as to the statement of a witness, 615
when a juror has knowledge of a fact connected with the case, 616
as to the presence of the defendant during proceedings on the trial, 617
discharge of jury on account of sickness, 618
on account of disagreement, 619
on account of adjournment, 620
cause may be again tried after discharge of jury, 621
proceedings of the court during the retirement of the jury, 622
verdict must be general, 626
rule as to finding on special pleas, 626
proceedings upon the return of verdict, 623 to 637
jury to be asked respecting their verdict, 623
verdict to be entered when, 623
jury may be polled, 624
defendant must be present when, 625
where the verdict is informal, 627
where the jury refuse to have the verdict altered, 628
as to informal verdicts, where it appears an acquittal was intended, 628
upon acquittal, judgment to be forthwith entered, 629
upon conviction, judgment to be entered when, 629
rule where the offence consists of different degrees, 630
what offences include degrees, 631
jury may acquit one or more of the defendants and convict others, 632
jury may find a verdict as to one or more of defendants, and disagree as to others, 633
proceedings in such case, 633

TRIAL—(*continued.*)
defendant convicted in case of felony, to remain in custody, 634
to be discharged on acquittal, except in certain cases, 635
as to acquittal on the ground of insanity, 636
as to verdict upon a plea of "guilty," 637
before justices', mayors' and recorders, 823 to 844
UNLAWFUL ASSEMBLY—See *Riot.*
suppression of, 103
at elections, 106
VAGRANT,
definition of term, 891
arrest of, to be ordered by chief justice of county, and justices of the peace. 892
warrant against, when issued, 893
to be arrested by peace officer upon warrant, 894
duty of magistrates on arrest of, 895
magistrate shall certify case of, to the county court, 896
to be put to labor by the county court, 897, 898
municipal authorities may make regulations respecting, 899
may demand trial by jury, 900
cost in proceedings against, 978
when to be paid by county, 978
VENUE—See *Change of Venue.*
of criminal prosecutions, 190 to 208
for the prosecution of offences committed wholly or in part without the State, 190
on or near the boundary of two counties, 191
where person injured dies out of the State, 192
by person in the State upon one out of the State, 193
by person out of the State upon another within the State, 194
upon any river or stream the boundary of the State, 195
where the injury is received in one county, and death occurs in another, 196
upon a river, stream or highway, the boundary of two counties, 197
in the case of property stolen in one county and carried to another, 198
in case of duelling out of the State, by a citizen, 199
in case of offences by commissioner of deeds for this State, 200
on board of vessels upon any navigable waters of the State, 201
in case of illegal importation of slaves, 202
in cases of embezzlement, 203
forcible seizure and imprisonment, 204
kidnapping 204
enticing an unmarried female for purpose of prostitution, 204
against sheriff or other person, for escape of prisoners, 205
rule as to the statement in the indictment or information, 191, 197, 208
in general, the county where an offence is committed, is the proper place of prosecution, 208
change of, 527 to 536

VERDICT.

of acquittal, exhonerates defendant from second trial, 9
in criminal actions, rules governing, 623 to 637
jury when agreed, to be brought into court, and asked certain questions, 623
jury may be polled, 624
defendant must be present when, 625
must be general, 626
as to finding, on special pleas, 626
modification of informal verdict, 627, 628
where informal verdict is evidently intended as an acquittal, 628
where offence consists of different degrees, 630, 631
as to conviction of one or more defendants and acquittal of others, 632
where agreed upon as to some of the defendants, and not as to others, 633
when verdict of guilty is rendered, 629, 634
when verdict of acquittal is rendered, 635
acquittal on ground of insanity, 636
upon a plea of guilty, 637
in justices', mayors', and recorders' courts, 842, 843

WITNESS—See *Evidence, Deposition*

may be required to give bail before an examining court, 297
amount of security, how regulated, 298
bonds by, how forfeited and recovered, 299, 450 to 454
subpœna may be issued for, to any county, 435
attachment may be issued for, in case of felony, when, 436, 437
in case of misdemeanor, when, 440
when presumed to disobey a subpœna, 441
may be required to enter into recognizance, 442
when to be recognized without security, 443
subject to fine for disobedience to subpœna, 444, 445
before fine is entered against oath to be made by whom, 446
citation to, after fine entered, 447
may show excuse verbally, or in writing, 448
appearing and giving testimony after fine entered, 449
rule where security has been given by, 450
where no security was given by, 451
excuse of, to be judged of by the court, 452
sureties of, cannot discharge themselves by surrender after forfeiture, 453
fees of, 454
State shall, in no case pay fees of, 455
liability of the defendant, 456, 457
who are competent witnesses, 644 to 653
may be placed under rule in examining court, 235
on trial of criminal actions, 582, 583, 584
accused may be witness, when, 589
when to be re-examined on trials, 615
before jury of inquest, 860, 861, 862

WITNESS—(*continued.*)
deposition of, when, how, and by whom taken, 764 to 769
rule where a subscribing witness denies, or does not recollect the execution of an instrument, 666
rule where two witnesses are required, 666
how party may attack the testimony of his own witness, 668
when to pay cost, 979
WORDS AND PHRASES—See *Definition.*
to be understood in their usual acceptation, except where they are defined, 49
have the meaning given them in the Penal Code, 50
WRITS AND PROCESS,
style of, 15