

COMPILATION

OF THE

CONSTITUTION AND LAWS

RELATING TO

RAILROADS

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By EDWIN G. MERRIAM, Assistant Attorney, under direction of JOHN C. BROWN,
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JEFFERSON CITY:
TRIBUNE PRINTING COMPANY, PRINTERS AND BINDERS.
1883.

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 - 15. Of offenses relating to the protection of stock raisers in certain localities.
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SECTION

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- 2. Certain debts not to be compromised—Maximum rate of compromise.
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SECTION

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SECTION

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2. Goods delivered upon payment of charges in bill of lading.

SECTION

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SECTION

1. Lands surveyed as such belong to public free schools.
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REGULATION OF RAILROADS.—STATE ENGINEER.—DISCRIMINATION
PROHIBITED.

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1. State engineer.
2. Continued—Salary—Traveling Expenses—May accept pass.
3. Continued—Office and expenses—Engineer's secretary—Vouchers for expenses.
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5. Continued—Duties of—Report to Attorney-General.
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7. Uniform rates of transportation—Discrimination punished—Schedule of rates to be posted—Notice of change of rates—Station agent guilty of misdemeanor for failure to keep schedule posted.

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ARTICLE

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4623. Sheep, goats and swine not included herein.
4624. Unbranded hides and animals—No certificate of inspection granted, unless, etc.
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4626. Unbranded hides and animals may be seized, when.

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TEXAS STATE LIBRARY
Austin, Texas

STATE OF TEXAS

COUNTY OF DALLAS

TEXAS STATE LIBRARY
Austin, Texas

PROVISIONS

OF THE

CONSTITUTION OF TEXAS, 1876,

RELATING TO

RAILROADS.

ARTICLE I—Bill of rights.

III—Legislative department.

IV—Executive department.

VII—Education—The public free schools.

VIII—Taxation and revenue.

X—Railroads.

XI—Municipal corporations.

XII—Private corporations.

XIV—Public lands and land office.

XVI—General provisions.

ARTICLE I.

BILL OF RIGHTS.

SECTION 17. Eminent domain—Compensation for Land taken—Franchises, etc., subject to control of Legislature.

SEC. 17. **Eminent Domain—Compensation for Land taken—Franchises, etc., subject to Control of Legislature.**—No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being

made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrolable grant of special privileges or immunities shall be made; but all privileges and franchises of the Legislature, or created under its authority, shall be subject to the control thereof.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

SECTION

50. No power to lend credit of the State.
 51. No power to grant public money to corporation.
 52. No power to authorize county, city or town to do so.

SECTION

54. No power to release lien of State upon railroad.
 55. No power to release debts due State.
 56. No power to incorporate railroad company by special law.

SEC. 50. No Power to Lend Credit of the State.—The Legislature shall have no power to give or to lend, or to authorize the giving or lending of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other; or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

SEC. 51. No Power to Grant Public Money to Corporation.—The Legislature shall have no power to make any grant, or authorize the making of a grant, of public money to any individual, association of individuals, municipal or other corporations whatsoever: *Provided*, That this shall not be so construed as to prevent the grant of aid in case of public calamity.

SEC. 52. No Power to authorize County, City or Town to do so.—The Legislature shall have no power to authorize any county, city, town or other political corporation, or subdivision of the State, to lend its credit or to grant any public money or thing of value, in aid of or to any individual, association or corporation whatsoever; or to become a stockholder in such corporation, association or company. (a)

(a) Under the Constitution of 1845 it was competent for the Legislature to authorize a municipal corporation to subscribe to the capital stock of a railroad company and to issue bonds and to levy taxes for the liquidation of its subscription, if two-thirds of the electors of the corporation should vote in favor of the subscription at an election to be held for the purpose. *San Antonio vs. Jones*,

SEC. 54. No Power to Release Lien of State upon Railroad.—The Legislature shall have no power to release or alienate any lien held by the State upon any railroad, or in any wise change the tenor or meaning, or pass any act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

SEC. 55. No Power to Release Debts due State.—The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any incorporation or individual to this State, or to any county, or other municipal corporation therein.

SEC. 56. No Power to incorporate Railroad Company by Special Law.—The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, * * * * * for incorporating railroads or other works of internal improvements.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

SECTION 22. Attorney-General—To restrain corporations within their powers—To sue for forfeitures of charters.

SEC. 22. Attorney-General—To Restrain Corporations within their Powers—To sue for Forfeitures of Charters.
The Attorney General shall hold his office for two years and until his

28 Tex., 19; San Antonio vs. Gould, 34 Tex., 49. No case has yet been found in which a municipal corporation has been permitted, otherwise than by its common seal, to issue its negotiable bonds for the liquidation of its subscription to the stock of a company. San Antonio vs. Gould, 34 Tex., 49. Section 32 of article 12 of the Constitution of 1869, which authorized the granting of aid to internal improvements was not designed to determine the character of such aid or the manner in which it should be extended, but the conditions and extent of such aid." Austin vs. Gulf, etc., R. Co., 45 Tex., 234. County bonds may be made payable "in New York, Ib. Vote on subsidy, how submitted, Ib. Bonds might be issued when road was fit to be operated, although not yet operated. Ib. The act of countersigning and registering the bonds by the comptroller, contemplated by the charter of the of the International Railroad Company, was not a mere clerical or ministerial duty, but it was the duty of the comptroller, as well as the Governor, to see to it that the proper and necessary work to be done by the company, before the bonds could issue under the law, had been performed. Bledsoe vs. International Railroad Company, 40 Tex., 537. In San Antonio vs. Lane, it was assumed as well settled that the Legislature might authorize municipal corporations to subscribe for stock in railroad companies, and to provide for the payment of such subscriptions, in any manner not repugnant to the Constitution. 32 Tex., 405. After an election held to take the sense of the voters on a proposition to issue county bonds as a donation in favor of a railroad, the county court made an order showing the election to have been duly held and the proposition to have been

successor is duly qualified. He shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and, from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of government during his continuance in office. He shall receive for his services an annual salary of two thousand dollars, and no more, besides such fees as may be prescribed by law: *Provided*, That the fees which he may receive shall not amount to more than two thousand dollars annually. (a)

ARTICLE VII.

EDUCATION—THE PUBLIC SCHOOL FUND.

SECTION 2. Reservation of land for perpetual public school fund.

SEC. 2. **Reservation of Land for Perpetual Public School Fund.**—All funds, lands and other property heretofore set

adopted. The county court in thus officially declaring that the company had fully complied with the terms of the proposition, prior to the issuance of the the bonds, acted in their capacity of agents for the county, and after a tax had been levied and collected for their payment, it was no sufficient ground for cancelling the bonds, to allege a partial noncompliance by the railroad company with their proposition. *Anderson County vs. Houston*, etc., R. Co., 52 Tex., 228. An act of the Legislature entitled "An act to incorporate the San Antonio and Mexican Gulf Railroad," held unconstitutional in so far as it provided that certain municipalities might issue bonds to aid in the construction of the road; because it embraced a distinct object not expressed in the title of the act. *Peck vs. San Antonio*, 51 Tex., 490.

(a) In a suit instituted under this section it was held that the act of March 10, 1875, substituting for the causes and extent of forfeiture the failure to build the railway at the yearly rate of 40 miles (or 80 miles in two years), and on failure a forfeiture of the land grants upon that portion of the road not so constructed, is a repeal of so much of the original act, (act of Aug. 5, 1870) incorporating the International Railroad Company to the extent substituted thereby; and upon the failure to build said road at the rate of 80 miles every two years, the defendant company forfeited the right to the land grant as to that part of the road not so built. Such forfeiture is the extent of the penalty for such failure. After a forfeiture incurred by a failure to construct 80 miles in two years, the rapid construction so as to complete the entire road in the time contemplated in the relief act, will not restore the right to the land grant so forfeited. A grant of lands upon a completed section of ten miles is not effected by a subsequent failure to construct at a rate required by the relief law. *The State vs. International*, etc., R. Co., 57 Tex., 534. To authorize the institution of a suit in the name

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

ARTICLE VIII.

TAXATION AND REVENUE.

SECTION

1. Corporate property taxed—Occupation and income taxes on corporations.
4. No surrender of power to tax corporations.
5. Railroad property to bear its share of municipal taxation.

SECTION

8. Railroad property, how assessed.
11. Corporate property, where assessed.
18. Board of Equalization created.

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

SEC. 4. No Surrender of Power to tax Corporations.—The power to tax corporations and corporate property shall not be

of the State to forfeit the charter of a corporation, it is not necessary that the Legislature should, by some general or special statute, have authorized and directed it to be bought. When the State declares by its Legislature that a particular act of malfeasance or nonfeasance will amount to a forfeiture of a character, it is the duty of the proper State officers to give effect to that provision. Such a suit is properly instituted by the Attorney-General and the district attorney. *State vs. Southern Pacific R. Co.*, 24 Tex., 80. Contents of petition in suit to forfeit charter, *Ib.*

surrendered or suspended by act of the Legislature, by any contract or grant to which the State shall be a party. (a.)

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

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

SEC. 11. Corporate Property, where assessed.—All property, whether owned by persons or corporations, shall be assessed for taxation, and the taxes paid in the county where situated, but the Legislature may, by a two-thirds vote, authorize the payment of taxes of non-residents of counties to be made at the office of the Comptroller of Public Accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer.

SEC. 18. Board of Equalization created.—The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation (the County Commissioners' Court to constitute a Board of Equalization); and may also provide for the classification of all lands with reference to their value in the several counties. (b.)

(a) The eleventh section of the act supplementary to the act to incorporate the Buffalo Bayou, Brazos and Colorado Railway Company, passed July 27, 1870, construed in connection with the 12th section of the charter of the International Railroad Company, does not exempt the first named corporation from the payment of taxes to the State. *Galveston, etc., R. Co., vs. State*, 38 Tex., 224.

(b) The Board of Equalization was created by this provision, and its duties were sufficiently defined in the act of August 21, 1876, (Laws, 1876, ch. 153, p. 265) to make it competent to determine the value of property listed when that question was properly referred to it, either under section 5 or section 17 of that act. *International, etc., R. Co., vs. Smith county*, 54 Tex., 1. The act of March 22d, 1879 (Laws 1879, ch. 47, p. 44) defines the duties of Commissioners' Courts when sitting as a Board of Equalization, and requires such courts to convene as Boards of Equalization, on the second Monday in June of each year, or as soon thereafter as practicable before the first day of July, to re-

ARTICLE X.

RAILROADS.

SECTION

1. Right to construct road, intersect and connect with other roads.
2. Railroads, public highways — Maximum rates to be fixed by legislation.
3. Public office to be maintained in State—Annual meeting of directors.
4. Rolling-stock is personal property and not exempt from execution.
5. Competing lines not to be consolidated or have any officers in common.

SECTION

6. No consolidation permitted with foreign corporation.
7. Right to construct street railroads.
8. Provisions of this constitution to be accepted by existing corporations.
9. Railroads to pass through county seats, unless, etc.

SEC. 1. Right to construct Road, Intersect and Connect with other Roads.—Any railroad corporation or association, organized under the law for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State-line with railroads of other States. Every railroad company shall have the right, with its road, to intersect, connect with or cross any other railroad; and shall receive and transport each the others' passengers, tonnage and cars, loaded or empty, without delay or discrimination, under such regulations as shall be prescribed by law.

SEC. 2 Railroads Public Highways.—Maximum Rates to be fixed by Legislature.—Railroads heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and railroad companies common carriers. The Legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State; and shall from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties.

ceive all the assessment lists or books of the Assessors of their counties for their inspection, correction, equalization and approval. A petition for injunction to restrain the sale of land for taxes assessed under the act of Aug. 21, 1876, which taxes are alleged to be excessive, is not sufficient to authorize an injunction, if the petition shows no excuse for the failure of the plaintiff to take proper steps, at the proper time, to refer the valuation complained of to the Board of Equalization. *Houston, etc., R. Co., vs. Presido County*. 53 Tex., 518. See this case approved in *International, etc., R. Co., vs. Smith County, supra*. A party seeking by injunction equitable relief against an alleged unauthorized action by the Board of Equalization, must clearly establish facts showing the Board to have acted illegally and without authority. *International, etc., R. Co., vs. Smith County*, 54 Tex., 1; *Texas & Pacific R. Co., vs. Harrison County*, 54 Tex., 119. When a question of valuation for taxation has been once regularly referred to the proper Board of Equalization, the valuation of that tribunal is final. *Texas & Pacific R. Co., vs. Harrison County*, 54 Tex., 119.

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

SEC. 4. Rolling Stock is Personal Property and not exempt from Execution.—The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals; and the Legislature shall pass no laws exempting any such property from execution and sale.

SEC. 5. Competing Lines not to be Consolidated or have any Officers in Common.—No railroad or other corporation, or the lessees, purchasers and managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation, with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line. (a.)

(a) The consolidation of the Houston & Great Northern and the International Railway Companies, was unauthorized and wrongful as to the stockholders of the former company, objecting thereto, and the same having been consummated by a wrongful appropriation of the stockholders' equitable interest, the consolidated company was equitably bound to him therefor. *International etc.; R. Co., vs. Bremond*, 53 Tex., 96. Directors of one or two companies unlawfully consolidated by action of stockholders, are not liable to a non-assenting stockholder, nor to the corporation. Delay of two years by non-assenting stockholder to unlawful consolidation, how far laches. *Ib.*

The foundation of the liability of a consolidated corporation for the debts and liabilities of constituent corporations, must rest on agreement either express or implied. Ordinarily a consolidated

1885
1886

SEC. 6. No Consolidation permitted with Foreign Corporations.—No railroad company organized under the laws of this State shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other State or of the United States.

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

SEC. 8. Provisions of this Constitution to be accepted by existing Corporations.—No railroad corporation in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

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

ARTICLE XI.

MUNICIPAL CORPORATIONS.

SECTION 3. Subscriptions, etc., by municipal corporations to stock of railroad company prohibited.

SEC. 3. Subscriptions, etc., by Municipal Corporations to Stock of Railroad Company prohibited.—No county, city or other municipal corporation shall hereafter become a subscriber to

corporation, for the purpose of answering to the liabilities of the old corporations, is deemed the same as each of its constituents and may be sued under its new name for their debts, as if no change had been made in the name or organization of the original corporation (*Indianola R. Co., vs. Fryer*, 56 Tex., 609); but this rule is restricted to voluntary consolidation. *Houston, etc., R. Co., vs. Shirley*, 54 Tex., 125. The Texas & Pacific Railway Company was liable for damages caused by the Southern Pacific Railway Company prior to the 21st of March, 1872, the date when the consolidation of said companies was effected in pursuance of legislative enactments. *Texas & Pacific Ry. Co., vs. Murphy*, 46 Tex., 356.

the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit; but this shall not be construed to in any way affect any obligation heretofore undertaken pursuant to law.

ARTICLE XII.

PRIVATE CORPORATIONS.

SECTION

1. To be created by general laws.
2. Continued—The public and stockholders to be protected.
3. Right to regulate freights.

SECTION

4. Extortion of illegal charges to be punished.
5. Laws regulating freights subject to amendment.
6. Fictitious issues of stock and bonds void.
7. Vested rights preserved.

SEC. 1. To be Created by General Laws.—No private corporation shall be created except by general laws. (*a*)

SEC. 2. Continued—The Public and Stockholders to be Protected.—General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

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

SEC. 4. Extortion of Illegal Charges to be Punished.—The first Legislature assembled after the adoption of this Constitution shall provide a mode of procedure by the Attorney-General and district or county attorneys, in the name and behalf of the State, to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

SEC. 5. Laws regulating Freights, Subject to Amendment.—All laws granting the right to demand and collect freights,

(*a*) Railroad charters are generally treated as private acts of the Legislature, of which courts do not take judicial notice. *Conley vs. Columbus Tap. Ry. Co.*, 44 Tex., 579.

fares, tolls or wharfage, shall at all times be subject to amendment, modification or repeal by the Legislature.

SEC. 6. Fictitious Issues of Stock and Bonds, Void.—No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void.

SEC. 7. Vested Rights Preserved.—Nothing in this article shall be construed to divest or affect rights guaranteed by any existing grant or statute, of this State, or of the Republic of Texas.

ARTICLE XIV.

PUBLIC LANDS AND LAND OFFICE.

SECTION

3. Lands granted to railroad companies, on what conditions.

SECTION

5. Lands granted to railroad companies to be alienated within a certain time.

SEC. 3. Lands Granted to Railroad Companies on what Conditions.—The Legislature shall have no power to grant any of the lands of this State to any railway company except upon the following restrictions and conditions:

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

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

SEC. 5. Lands Granted to Railroad Companies to be Alienated within a Certain Time.—All lands heretofore or hereafter granted to railway companies, where the charter or law of the State required or shall hereafter require their alienation within a certain period, on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alien-

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

ARTICLE XVI.

GENERAL PROVISIONS.

<p>SECTION 25. Drawbacks and abatements of freight prohibited.</p>	<p>SECTION 35. Laborers on railroads to be protected by lien for wages.</p>
<p>26. Homicide by corporation punished by exemplary damages.</p>	<p>37. Liens of mechanics, artisans and material men.</p>

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

SEC. 26. Homicide by Corporation punished by Exemplary Damages.—Every person, corporation or company that may commit a homicide, through willful acts or omission or gross neglect, shall be responsible in exemplary damages to the surviving husband, widow, heirs of his or her body, or such of them as there may be, with-

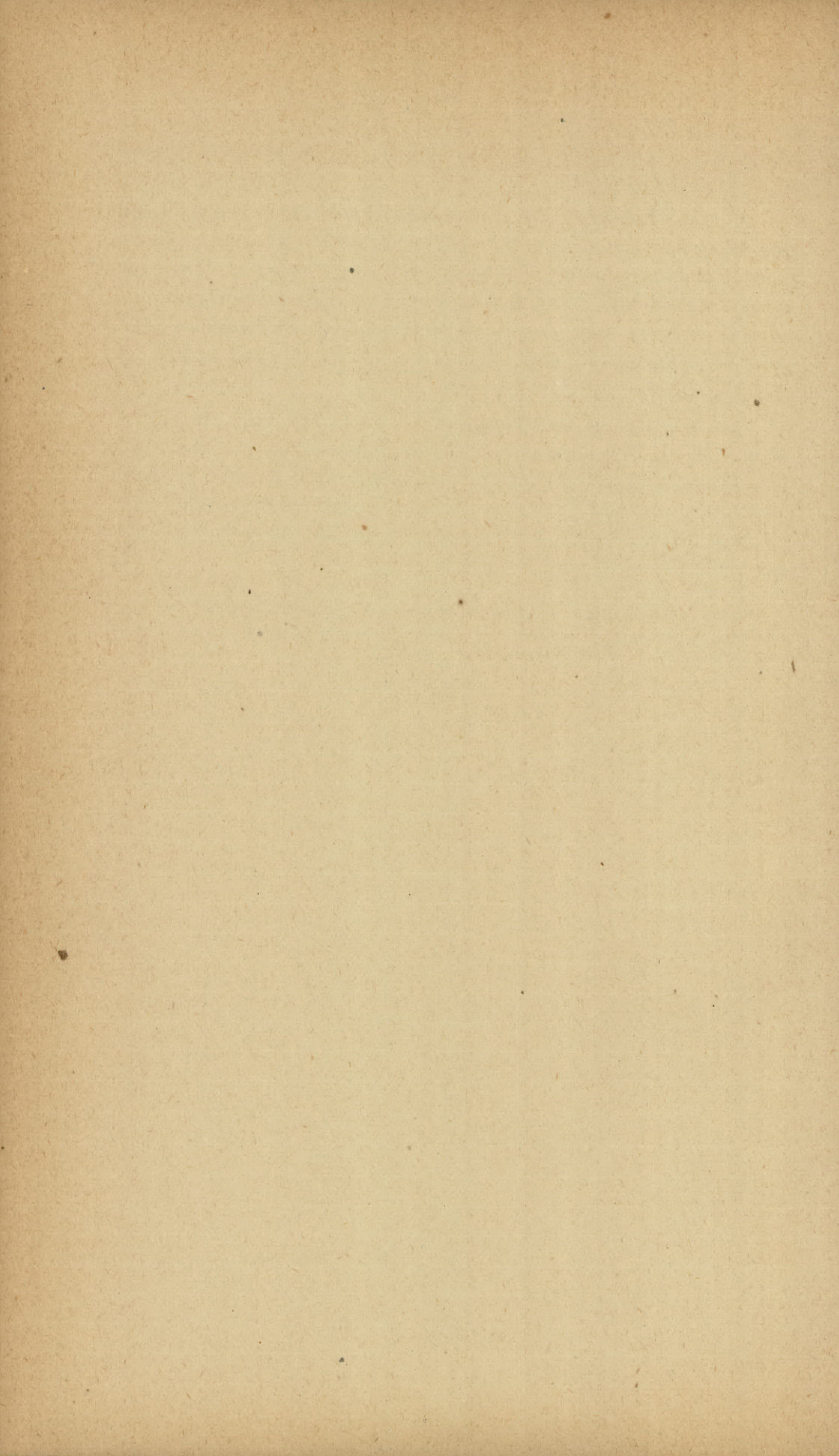
out regard to any criminal proceeding that may or may not be had in relation to the homicide.

SEC. 35. Laborers on Railroads to be protected by Lien for Wages.—The Legislature shall, at its first session, pass laws to protect laborers on public buildings, streets, roads, railroads, canals and other similar public works, against the failure of contractors and sub-contractors to pay their current wages when due, and to make the corporation, company or individual for whose benefit the work is done, responsible for their ultimate payment. (*a.*)

SEC. 37. Liens of Mechanics, Artisans and Material Men.—Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them, for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens. (*b.*)

(*a.*) This section did not give to laborers on railroads a lien on the property of the company on which they labored, as is provided by section 37, of this article to mechanics, artisans and material men. Central, etc., R. Co. vs. Henning, 52 Tex., 466.

(*b.*) See note to Sec. 35 *ante.*



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PROVISIONS

OF THE

REVISED STATUTES OF TEXAS, 1879,

RELATING TO

RAILROADS.

PROVISIONS

OF THE

Revised Statutes of Texas, 1879,

RELATING TO

RAILROADS.

TITLE 6.

ARBITRATION.

ARTICLE 55. Corporations may submit to arbitration.

ART. 55. **Corporations may submit to Arbitration.**—The provisions of this title shall apply to corporations as well as natural persons, and executors, administrators, and guardians may also consent to an arbitration of any controversy or matter of dispute relating to or affecting their respective trusts, with the consent of the court in which such administration or guardianship is pending.

TITLE 9.

ATTACHMENT AND GARNISHMENT.

CHAPTER 2.

OF GARNISHMENT.

ARTICLE

185. Application for writ.
 187. Contents of writ against corporation.
 191. Effect of service
 193. Garnishee discharged on what answer.

ARTICLE

208. Judgment against corporation for shares of
 stock owned therein.
 209. Continued—Sale of such shares.
 210. Continued—Effect of such sale.
 220. Garnishee discharged.

ART. 185. Application for writ.—Before the issuance of the writ of garnishment the plaintiff shall make application therefor in writing, under oath, signed by him, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his hands effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company or has an interest therein.

ART. 187. Contents of Writ against Corporation.—Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what number of shares, if any, the defendant owns in such company, or owned when such writ was served, and what interest, if any, he has in such company, or had when such writ was served. (Act March 13, 1875, p. 102, §§ 1, 2.)

ART. 191. Effect of Service of Writ.—From and after the service of such writ of garnishment it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects, nor shall the garnishee, if an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment, delivery, sale or transfer shall be

void and of no effect as to so much of said debt, effects, shares or interest as may be necessary to satisfy the plaintiff's demand. (Act March 13, 1875, p. 104, § 6.)

ART. 193. Garnishee Discharged on what Answer.—Should it appear from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession any effects of the defendant, and had not when the writ was served; and when the garnishee is an incorporated or joint stock company in which the defendant is alleged to be the owner of any shares of stock or interested therein, if it shall further appear from such answer that the defendant is not and was not when the writ was served the owner of any of such shares, or interested in such company; and should the answer of the garnishee not be controverted, as hereinafter provided, the court shall enter judgment discharging the garnishee.

ART. 208. Judgment against Corporation for Shares of Stock owned therein.—Where the garnishee is an incorporated or joint stock company, and it appears from the answer, or otherwise, that the defendant is, or was when the writ of garnishment was served, the owner of any shares of stock in such company, or any interest therein, the court shall render a decree, ordering the sale under execution in favor of the plaintiff against the defendant of such shares, or interest of the defendant in such company, or so much thereof as may be necessary to satisfy such execution. (Act March 13, 1875, p. 103, § 3.)

ART. 209. Continued—Sale of such Shares.—The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the sheriff or constable making such sale shall execute a transfer of such shares or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold. (Act March 13, 1875, p. 103, § 5.)

ART. 210. Continued—Effect of such Sale.—Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which defendant had in such shares of stock, or in such company, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the same had been made by the defendant himself. (Act March 13, 1875, p. 104, § 3.)

ART. 220. Garnishee Discharged.—It shall be a sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of such garnishee, or on the possession by him of

any effects, or where the garnishee is an incorporated or joint stock company in which the defendant was the owner of shares of stock or other interest therein, for the garnishee to show that such indebtedness was paid, or such effects were delivered, or such shares of stock or other interest in such company were sold under the judgment of the court in accordance with the provisions of this chapter. (a)

TITLE 13.

CARRIERS.

CHAPTER I—Of the duties and liabilities of carriers.

II—Of the disposition of unclaimed or perishable property.

CHAPTER 1.

OF THE DUTIES AND LIABILITIES OF CARRIERS.

ARTICLE

277. Common law duties and liabilities.
 278. No limitation of common law liability by bill of lading, etc.
 279. Duty to receive and transport goods—Penalty for refusal.
 280. Duty to give shipper a bill of lading.

ARTICLE

281. Liability as warehouseman.
 282. Continued.
 283. Goods to be forwarded in the order received.
 284. Live stock to be fed and watered—Penalty for failure.

ART. 277. Common Law Duties and Liabilities.—The duties and liabilities of carriers in this State shall be the same as are prescribed by the common law, and the remedies against them shall be the same, except where otherwise provided by this title (b.)

(a) In garnishment proceedings the creditor is the actor, and the burden of proof lies on him when the garnishee, by answer, denies his indebtedness to the defendant. *East Line, etc., R. Co. vs. Terry*, 50 Tex., 129.

(b) A common carrier, as understood generally, and for all persons indifferently, is one who undertakes to convey goods, and to deliver them at a place appointed, for hire, with or without agreement as to price. *Chevallier vs. Straham*, 2 Tex., 117. This rule qualified by particular circumstances. *Haynie vs. Baylor*, 18 Tex., 507. It is immaterial whether he transports goods generally or occasionally. *Chevallier vs. Straham*, 2 Tex., 119; *Philteo vs. Sanford*, 17 Tex., 230. From considerations of public policy, common carriers are made liable under the statute and under the decisions at the courts of Texas, as at common law, for all losses not occasioned by the act of God or the public enemy; and any exception or special contract seeking to vary that liability are invalid. But if the shipper practices a fraud on the carrier by concealing, either through his acts or omissions, the value of the article shipped, the carrier is discharged. *Houston, etc., R. Co., vs. Burke*, 55 Tex., 323; see, also, *Chevallier vs. Straham*, 2 Tex., 122; *Philleo vs. Sanford*, 17 Tex., 230. The

ART. 278. No Limitation of Common Law Liability by Bill of Lading, etc.—Railroad companies and other common carriers of goods, wares and merchandise, for hire, within this State, on land or in boats or vessels on the waters entirely within the body of this State, shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation, or in any other manner whatever, and no special agreement made in contravention of the foregoing provisions of this article shall be valid. (Act Dec. 4, 1863, P. D. 452.)

ART. 279. Duty to receive and transport Goods—Penalty for Refusal.—Upon the tender of the legal or customary rates of freight on goods offered for transportation, to any common carrier whatever, such carrier shall receive and transport such goods, provided his vehicle or vessel has capacity safely to carry the goods so offered on the trip or voyage then pending, and such goods are of the kind usually carried upon such vehicle or vessel, and are offered at a reasonable time. Any common carrier refusing to transport goods, as above provided, taking the same in the order presented, shall be liable to the party injured for all damages sustained by reason of his refusal, and shall also be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered in each case by the owner of the goods in any court having jurisdiction in the county where the wrong is done or where the common carrier resides. (P. D. 453.)

ART. 280. Duty to give Shipper a Bill of Lading.—Common carriers are required, when they receive goods for transportation, to give to the shipper, when it is demanded, a bill of lading or memorandum in writing, stating the quality, character, order and condition of the goods; and such goods shall be delivered, in the manner provided by common law, in like order and condition to the consignee, the unavoidable wear and tear and deterioration in due course of transportation only excepted; and in case such common carrier shall fail to deliver goods as above required, they shall be liable to the party injured for his damages, as at common law; and in case of their refusal to execute and deliver a bill of lading or memorandum in writing, as above required, they shall be liable to a penalty of not less

act of God defined. *Chevallier vs. Straham*, 2 Tex., 123; *Navigation Co., vs. Dwyer*, 29 Tex., 376. Where it was the custom to carry cotton on the river in open boats, and it was known to the owner that it was to be so carried, the carrier is not liable to damages resulting from rain. *Chevallier vs. Patton*, 10 Tex., 346, distinguishing *Chevallier vs. Straham*, 2 Tex., 124, and *Philleo vs. Sanford*, 17 Tex., 230.

than five nor more than five hundred dollars, to be recovered as in the preceding article. (Act. Feb. 4, 1860, P. D. 454.) (a)

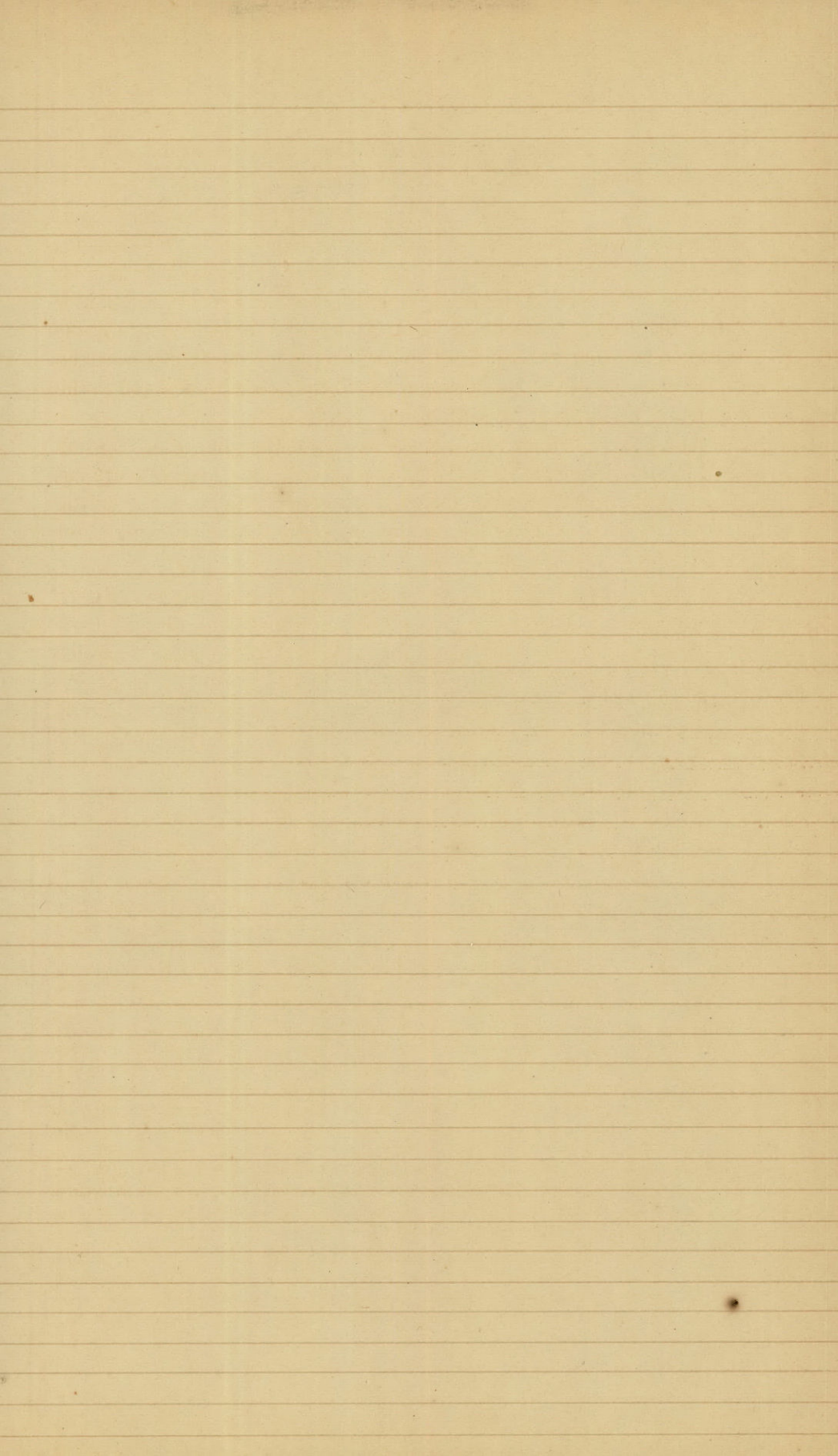
ART. 281. Liability as Warehousemen.—Railroad companies, and other common carriers having depots or warehouses for storing goods, shall be liable as warehousemen are at common law for goods and the care of the same, stored in such depots or warehouses before the commencement of the trip or voyage on which said goods are to be transported; but shall be liable as common carriers from the commencement of the trip or voyage until the goods are delivered to the consignee at the point of destination. (P. D. 455.)

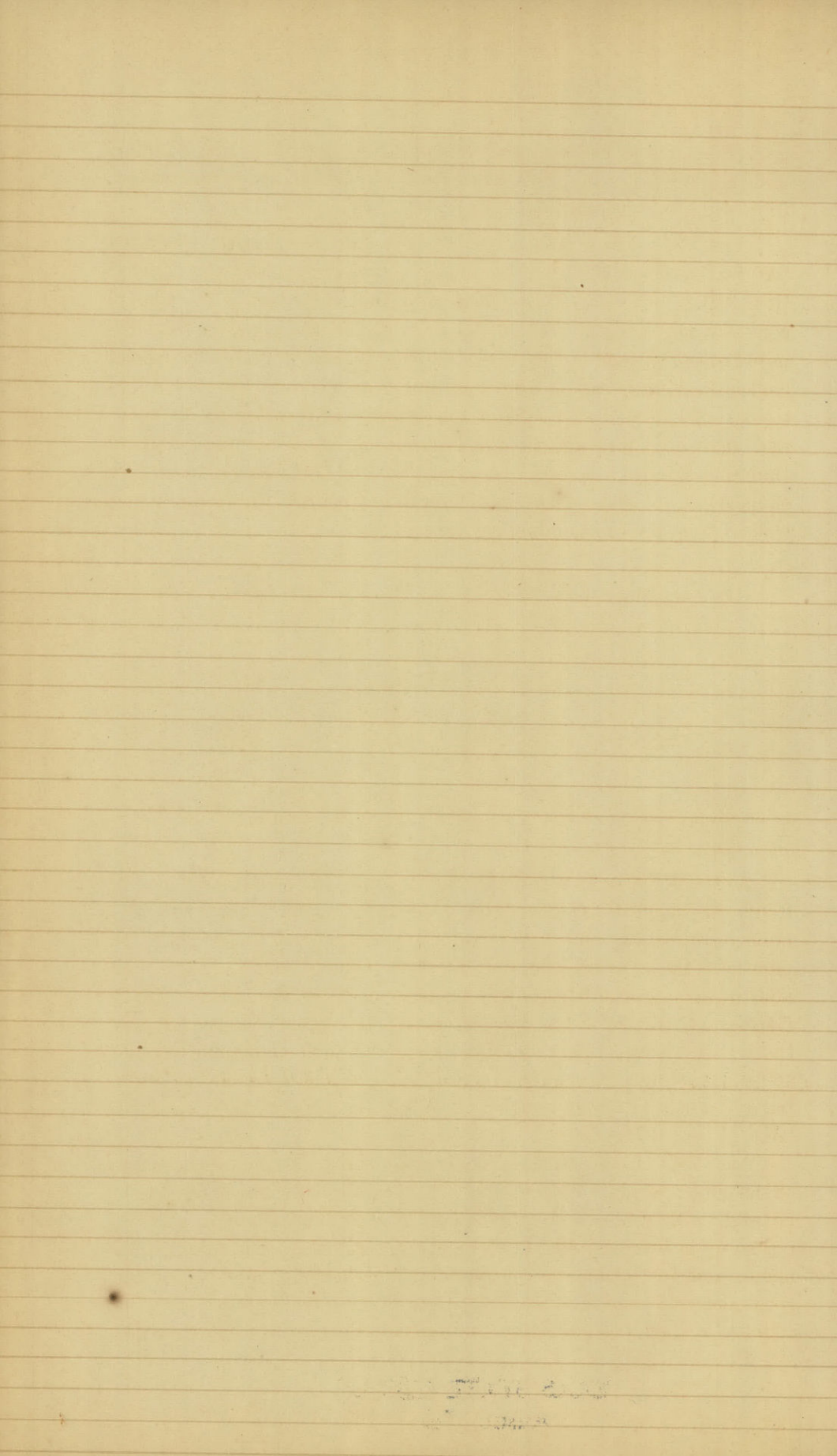
ART. 282. Continued.—If the carrier at the point of destination shall use due diligence to notify the consignee, and the goods are not taken by the consignee, and have in consequence to be stored in the depots or warehouses of the common carriers, they shall thereafter only be liable as warehousemen. (Ib.) (b)

ART. 283. Goods to be forwarded in the order received. Where common carriers receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are received, the first received to be first forwarded, without giving the preference to one over another, and in case they shall fail to do so, they shall be liable, absolutely, for all losses occurring while the goods remain, and for all damages occasioned or in any wise resulting from the delay: *Provided*, that the trip or voyage shall be considered

(a) "Unavoidable," means "inevitable accidents." And a bill of lading so signed makes the owners of the boat common carriers. *Fowler vs. Davenport*, 21 Tex., 631. The net value of the goods at the place of destination, is in general the true criterion of damages. *Fowler vs. Davenport*, 21 Tex., 635; *Wolfe vs. Lacy*, 30 Tex., 349. Interest is not recoverable unless stipulated for in the bill of lading. *Ib.* Measure of damages for loss or destruction of family portraits, which have no market value. *Houston, etc., R. Co., vs. Burke*, 55 Tex., 323. A wagoner's receipt of goods "in good order," is *prima facie* evidence that that they were so when received. *Austin vs. Talk*, 20 Tex., 166. And if he settles the damages, he can only disturb the settlement by proof of fraud and misrepresentation. *Ib.* What will constitute a delivery to the carrier. *Houston, etc., R. Co., vs. Hodds*, 42 Tex., 397; *Morgan vs. Dibble*, 29 Tex., 107; *Forbes vs. Davis*, 18 Tex., 273. Where cotton was shipped upon a boat, which failed to reach the port of destination, and the master failed to hire another boat, because he could not agree upon terms; and the owner some months afterwards, took possession of his freight in a damaged condition, the carrier was not entitled to any compensation. *Adams vs. Haught*, 14 Tex., 243, 248. The master of the vessel has no right to sell the cargo except in case of the irreparable interruption of the voyage or of the necessity of partial sales, etc. *Stillman vs. Herd*, 10 Tex., 111. Where a party at request and without compensation carried money to New Orleans for H, and on his arrival there finding the yellow fever in the city, left the money with a good commercial house, who called several times for H, and then wrote him; and the house afterwards failed and did not pay on demand; the carrier was held liable for ordinary diligence only. *Fulton vs. Alexander*, 21 Tex., 150.

(b) A railway company, as a common carrier, is responsible for the delivery of goods shipped by it to the consignee; and the company is liable on delivery to anyone else. The statute (Pasch. Dig. art. 455) altering the liability from that of common carriers to warehousemen, does not apply where no effort is made to notify the consignee of the arrival of the goods. *Houston, etc., R. Co., vs. Adams*, 49 Tex., 748.





as having commenced from the time of the signing of the bill of lading, and the liability of the common carrier shall attach, as at common law, from and after such signing. (Ib.)

ART. 284. Live Stock to be fed and watered—Penalty for Failure.—It shall be the duty of a common carrier who conveys live stock of any kind to feed and water the same during the time of conveyance and until the same is delivered to the consignee, or disposed of as provided in this title, unless otherwise provided by special contract, and any carrier who shall fail to so feed and water said live stock sufficiently shall be liable to the party injured for his damages, and shall be liable also to a penalty of not less than five nor more than five hundred dollars, to be recovered by the owner of such live stock in any court having jurisdiction in any county where the wrong is done or where the common carrier resides.

CHAPTER 2.

DISPOSITION OF UNCLAIMED OR PERISHABLE PROPERTY.

ARTICLE

- 285. Unclaimed freight may be sold.
- 286. Continued—Notice of sale.
- 287. Account of sales to be kept.

ARTICLE

- 288. Live stock may be sold.
- 289. Perishable property may be sold.

ART. 285. Unclaimed Freight may be sold.—When any freight or baggage has been conveyed by a common carrier to any point in this State, and shall remain unclaimed for the space of three months at the office or depot nearest or most convenient to destination, and the owner, whether known or unknown, fails within that time to claim such freight or baggage, or to pay the proper charges if any there be against it, then it shall be lawful for such common carrier to sell such freight or baggage at public auction, offering each box, bale, trunk, valise or other article separately as consigned or checked. (Act, May 2, 1874, p. 203; P. D., 5884 *a.*)

ART. 286. Continued—Notice of Sale.—Thirty days notice of the time and place of sale, and a descriptive list of the packages to be sold, with names and numbers or marks found thereon, shall be posted up in three public places in the county where the sale is to be made, and on the door of the depot or warehouse, if any, where the goods are, and shall also give notice in at least one newspaper in the county, if any be published therein, for thirty days before sale;

and out of the proceeds of such sale the carrier shall deduct the proper charges on such freight or baggage, including costs of storing and costs of sale, and hold the overplus, if any, to the order of the owner at any time within five years, on proof of ownership made by the claimant or his duly authorized agent or attorney. (Ib. P. D. 5884 *b.*)

ART. 287. Account of Sales to be kept.—The carrier shall keep an account of sales, copy of the notice, a copy of the sale bill, and the expense thereof proportioned to each article sold. (Ib. P. D. 5885 *c.*)

ART. 288. Live Stock may be sold.—Should any live stock remain unclaimed for the space of forty-eight hours after its arrival at the place of its destination, the carrier may sell the same at public auction after giving five days' notice of the time and place of such sale, as prescribed in article 286, and apply the proceeds as prescribed in said article, after deducting reasonable expenses for keeping, feeding and watering said live stock from the time of its arrival at the place of its destination until disposed of as herein provided, and such carrier shall also keep an account of any such sale, copy of the notice, copy of the sale bill and an account of all expenses. (Ib. P. D. 5884 *d.*)

ART. 289. Perishable Property may be sold.—Should any perishable property remain unclaimed after arrival at its place of destination until in danger of depreciation, it shall be the duty of the carrier to sell the same at public auction, after giving five days' notice of the time and place of sale, as prescribed in article 286, and apply the proceeds as prescribed in said article, and keep an account of such sale, copy of the notice, copy of the sale bill and an account of all expenses. (Ib., P. D. 5884 *d.*)

TITLE 17.

CITIES AND TOWNS.

CHAPTER 4.

OF THE GENERAL POWERS AND DUTIES OF THE CITY COUNCIL.

ARTICLE
336. To regulate hackmen, porters, railroad runners, etc.

ARTICLE
414. To control laying of tracks in streets.

ART. 386. To regulate Hackmen, Porters, Railroad Runners, etc.—To license, tax, and regulate hackmen, draymen, omnibus drivers and drivers of baggage wagons, porters, and all others pursuing like occupations, with or without vehicles, and prescribe their compensation, and provide for their protection, and make it a misdemeanor for any person to attempt to defraud them of any legal charge for services rendered, and to regulate, license and restrain runners for railroads, stages and public houses. (Act of March 15, 1875, p. 113, § 43.)

ART. 414. To control laying of Tracks in Streets.—To direct and control the laying and constructing of railroad tracks, turn-outs and switches, or prohibit the same, in the streets, avenues and alleys, unless the same shall have been authorized by law, and the location of depots within the city; to require that railroad tracks, turn-outs and switches, shall be so constructed as to interfere as little as possible with the ordinary travel and use of streets, avenues and alleys, and that sufficient space shall be left on either side of said track for the safe and convenient passage of teams, carriages and other vehicles, and persons; to require railroad companies to keep in repair the streets, avenues or alleys through which their track may run, and if ordered by the city council to construct and keep in repair suitable crossings at the intersection of streets, avenues and alleys, and ditches, sewers and culverts, when the city council shall deem it necessary; to direct the use and regulate the speed of locomotive engines in said city, or to prevent and prohibit the use or running of the same within the city: *Provided*, that the provisions of this article shall apply to railroads known as steam railroads, and not to city, street or horse railroads. (Act of March 15, 1875, § 70.) (a)

(a) An obligation by the railroad company, that it "shall at all times keep the road-bed of said railroad in good repair, and shall keep said road-bed up to the level of the streets; in no case shall said road-bed be above or below the city grade of the streets, after said streets shall have been graded by the city"—does not oblige the railroad company to fill up the streets beneath its track, so as to keep its road-bed on a level with the street on each side of the track. Such an obligation merely requires the road to be kept in good repair, and does not bind the company to contribute to the expense of grading the streets, but merely to conform to and keep the level of the road-bed to that of the streets when graded. *Galveston vs. Galveston R. Co.*, 46 Tex., 435. Release by city council of company from an obligation "to construct and keep in good repair all cross culverts whenever the same may be required under their railroad tracks." 1b. A charter to build a railroad to a city imports authority to extend the road within the corporate limits, and the right to use any public street in such city without making compensation therefor. *Houston, etc., R. Co., vs. Odum*, 53 Tex., 343. Distinction between the regulation or enlargement or use of a street, the property of the State, by the Legislature, and such enlargement of use of a dedicated street. Adjacent lot owners have no claim for damages in the former case, although they may have in the latter. *Houston, etc., R. Co., vs. Odum*, 53 Tex., 343. Conditional grant of right of way through certain streets of a town. Bond executed by a company in the sum of fifty thousand dollars, as stipulated damages, conditioned for the faithful performance of certain conditions. Having taken and used the right of way, the company cannot set up the defense that the contract was *ultra vires*. The amount named in the bond, was stipulated damages recoverable as such and not a penalty. *Indianola vs. Gulf, etc., Ry.* 56 Tex., 594.

CHAPTER 5.

OF TAXATION.

ARTICLE 435. Personal estate includes what.

ART. 435. **Personal Estate includes what.**—The term personal estate of property, as used in this title, shall be construed to include all household furniture, moneys, goods, capital, chattels, public stocks and stocks of corporations, moneyed or otherwise, and generally all property which is not real. (Act of March 15, 1875, p. 113, § 89.)

CHAPTER 6.

OF THE COLLECTION OF TAXES.

ARTICLE 449. City council may require inventory of tax- able property.	ARTICLE 440. Duty to render such inventory.
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ART. 439. **City Council may require Inventory of Taxable Property.**—The city council * * * * may by ordinance provide that any person, firm, or corporation having property subject to taxation or being liable for any tax under the provisions of this title, and neglecting to render a list, inventory and appraisal thereof, as required by ordinance of said city, shall be liable to fine and imprisonment. (Act of March 15, 1875, p. 118, § 92.)

ART. 440. **Duty to render such Inventory.**—Every person, partnership and corporation owning property within the limits of the corporation shall, within two months after published notice, hand in to the assessor and collector of the city a full and complete inventory of the property possessed or controlled by him, her, or them within said limits not exempt from taxation, on the first day of January of the current year, verified as required by ordinance; and any person failing or refusing to comply with the provisions of this article shall be liable to fine and imprisonment, and the city council shall, by ordinance, clearly define the duty of taxpayers herein, and make all necessary rules and regulations to secure the rendition of property and the collection of taxes due thereon. (Ib. § 93.)

TITLE 20.

CORPORATIONS—PRIVATE.

CHAPTER 1.

PRELIMINARY PROVISION.

ARTICLE
562. Corporations classified.
563. Public corporations defined.

ARTICLE
564. Private corporations defined.

ART. 562. **Corporations classified.**—Corporations are either public or private. (Act April 23, 1874, p. 120; P. D. 5932.)

ART. 563. **Public Corporation defined.**—A public corporation is one that has for its object the government of a portion of the State. (P. D. 5933.)

ART. 564. **Private Corporations defined.**—Private corporations are of three kinds: *First*, religious; *second*, corporations for charity or benevolence; and, *third*, corporations for profit. (P. D. 5934.)

CHAPTER 2.

OF THE CREATION OF CORPORATIONS.

ARTICLE
565. Three or more persons may form a corporation.
566. For what purposes.
567. Contents of charter.
568. Charter subscribed and acknowledged.
569. Charter filed with Secretary of State.

ARTICLE
570. Corporate existence dates from filing.
571. Amendment of charter.
572. Continued.
573. Continued.
574. Legislature may alter, reform or amend charter.

ART. 565. **Three or more Persons may form a Corporation.**—Private corporations may be created by the voluntary association of three or more persons for the purposes and in the manner hereinafter mentioned. (Act April 23, 1874; P. D. 5935.) (a)

(a) See Art. 4099.

ART. 566. **For what Purposes.**—The purposes for which private corporations may be formed, are—

1. The support of public worship.
2. The support of any benevolent, charitable, educational or missionary undertaking.
3. The support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts.
4. The encouragement of agriculture and horticulture.
5. The maintenance of public parks, and of facilities for skating and other innocent sports.
6. The maintenance of a public and private cemetery.
7. The purchase, location and subdivision of lands and the sale and conveyance of the same in lots and subdivisions or otherwise.
8. The construction and maintenance of any species of road except a railroad, and of bridges in connection therewith. (b)
9. The construction and maintenance of a bridge.
10. The construction and maintenance of a telegraph line.
11. The establishment and maintenance of a ferry.
12. The establishment and maintenance of a line of stages.
13. The building and navigation of steamboats and carriage of persons and property thereon.
14. The supply of water to the public.
15. The manufacture and supply of gas or the supply of light or heat to the public by any other means.
16. The transaction of any manufacturing, mining, mechanical or chemical business.
17. The transaction of a printing and publishing business.
18. The establishment and maintenance of a hotel.
19. The erection of buildings and the accumulation and loan of funds for the purchase of real property.
20. The improvement of the breed of domestic animals, by importation, sale or otherwise.
21. The transportation of goods, wares and merchandise or any valuable thing.

(b) See Art. 4099.

22. The promotion of emigration.
23. The construction and maintenance of sewers.
24. The construction and maintenance of a street railway.
25. The erection and maintenance of market houses and market places.
26. The construction and maintenance of canals for the purpose of irrigation or manufacturing purposes.
27. For any other purpose intended for mutual profit or benefit not otherwise especially provided for and not inconsistent with the Constitution and laws of this State.

ART. 567. Contents of Charter.—A charter must be prepared, setting forth—

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place or places where its business is to be transacted.
4. The term for which it is to exist.
5. The number of its directors or trustees, and the names and residences of those who are appointees of the first year.
6. The amount of its capital stock, if any, and the number of shares into which it is divided.
7. The charter of a bridge or ferry company shall also state the stream intended to be crossed by the bridge or ferry.
8. The charter of a road company must also state: *First*, the kind of road intended to be constructed; *second*, the places from and to which the road is intended to be run; *third*, the counties through which it is intended to be run; *fourth*, the estimated length of the road (*a.*)

ART. 568. Charter Subscribed and Acknowledged.—The charter of an intended corporation must be subscribed by three or more persons, two of whom, at least, must be citizens of this State, and must be acknowledged by them before an officer duly authorized to take acknowledgments of deeds. (*Ib.*, § 8; P. D., 5939.) (*b.*)

ART. 569. Charter Filed with Secretary of State.—Such charter shall thereupon be filed in the office of the Secretary of State, who shall record the same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the charter,

(*a.*) See art. 4101.

(*b.*) See art. 4099.

or of the record thereof certified under the great seal of the State, shall be evidence of the creation of a corporation. (Ib., § 9; P. D., 5940.) (a)

ART. 570. Corporate Existence dates from Filing.—The existence of the corporation shall date from the filing of the charter in the office of Secretary of State, and the certificate of the Secretary of State shall be evidence of such filing. (Ib., § 10; P. D., 5941.) (b)

ART. 571. Amendment of Charter.—Any private corporation heretofore organized or incorporated, or which may hereafter be organized or incorporated, for any of the purposes mentioned in this chapter, may amend or change its charter or act of incorporation, by filing, authenticated in the manner required by this chapter as to an original charter of incorporation, such amendments or changes with the Secretary of State; and in case of a corporation created by special act of the Legislature, said corporation shall cause the amendments or changes to its charter to be authenticated as required in the case of an original charter of incorporation, and filed with the Secretary of State, together with the original charter of such company, and such amendments thereto, or changes therein, if any, as have been made by special act of the Legislature, and the same shall be recorded by the Secretary of State, followed by the proposed amendments or changes thereof. (Ib., §10; P. D., 6011b.) (c)

ART. 572. Continued.—The amendments or changes provided for in the preceding article shall take effect and be in force from the date of the filing thereof with the Secretary of State, and the certificate of the Secretary of State shall be evidence of such filing. (Ib.) (d)

ART. 573. Continued.—No amendments or changes violative of the constitution or laws of this State, or of any of the provisions of this title, shall be of any force or effect; and no amendments or changes shall be of any force or effect which are not germane to the original purposes or charter of incorporation, and calculated to carry out and effect of the same. (Ib.)

ART. 574. Legislature may Alter, Reform or Amend Charter.—All charters, or amendments to charters, under the pro-

(a) See arts. 4102, 4103.

(b) See art. 4104.

(c) See art. 4108 *et seq.*

(d) See art. 4110.

visions of this chapter, shall be subject to the power of the Legislature to alter, reform or amend the same. (Ib.) (a)

CHAPTER.

OF THE POWERS AND DUTIES OF PRIVATE CORPORATIONS.

ARTICLE

- 575. General powers of.
- 576. Increase of capital stock.
- 577. Borrowing money.
- 578. Opening books for subscription.
- 579. Quorum of directors—Annual, election of.
- 580. Election of officers.
- 581. By-laws—Adoption and amendment of.
- 582. Increase of number of directors.
- 583. Failure to elect directors.
- 584. Trustees of religious corporations.
- 585. Powers of directors—Disposition of unsubscribed stock.
- 586. Stock books and records—Open to stockholders.

ARTICLE

- 587. Reports to stockholders—Declaration of dividends.
- 588. Acceptance of these provisions by existing corporations.
- 589. Corporation restricted to legitimate objects.
- 590. Stock, personalty, and how transferable.
- 591. Payment of calls.
- 592. Continued—Forfeiture of stock for non-payment.
- 593. Corporation may sue its members.
- 594. Fraudulent dividends—Liability of directors.

ART. 575. General Powers of.—Every private corporation, as such, has power :

1. To have succession by its corporate name for the period limited in its charter, not to exceed fifty years, and when no period is limited for twenty years. (b.)
2. To maintain and defend judicial proceedings. (c.)
3. To make and use a common seal. (d.)
4. To hold, purchase, sell, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real personal or mixed, as shall be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due or belonging to the corporation. (e)

(a) Chapter 15, Acts 1879, provides that the department of State shall charge and collect a fee of five dollars for each charter, or amendment, or supplement thereto of a private corporation created for religious, literary, benevolent or scientific purposes; and a fee of twenty-five dollars for each charter, or amendment, or supplement thereto of a private corporation created for any other purpose (except railway and telegraph purposes, which pay a fee of one hundred dollars); the fees to be paid on filing same for record.

(b) See arts. 4106, 4209.

(c) See art. 4209.

(d) See art. 4210.

(e) See art. 4211.

5. To appoint and remove such subordinate officers and agents as the business of the corporation shall require, and to allow them suitable compensation. (a)

6. To make by-laws not inconsistent with existing laws for the management of its property, the regulation of its affairs, and the transfer of its stock. (b)

7. To enter into any obligation or contract essential to the transaction of its authorized business.

8. To increase or diminish, by vote of its stockholders, cast as its by-laws may direct, the number of its directors or trustees to be not less than three nor more than thirteen. (P. D., 5942.)

ART. 576. Increase of Capital Stock.—Any corporation may increase its capital stock to any amount not exceeding double the amount of its authorized capital, by a vote of the stockholders, in conformity with the by-laws thereof, and if a majority of the stockholders shall vote for the increase of the stock, the same may be increased by the board of directors, trustees or other business managers of such corporation; and upon such increase of stock being made in accordance with the by-laws, the date and amount shall be certified to the Secretary of State by the directors or trustees, and from the time such certificate is filed, the increase in stock shall become a part of the capital thereof. Such certificate shall be filed and recorded in the same manner as the charter. (Ib., § 12; P. D., 5943.) (c)

ART. 577. Borrowing Money.—Corporations shall have power to borrow money on the credit of the corporation, not exceeding its authorized capital stock, and may execute bonds or promissory notes therefor, and may pledge the property and income of the corporation. (Ib., § 13; P. D., 5944.) (d)

ART. 578. Opening Books for Subscription.—Whenever the full amount of the capital stock of a corporation having a capital stock shall not have been already subscribed in good faith, the directors or trustees named in the charter, or a majority of them, may, within three months after the filing of the charter, cause books to be opened for receiving subscriptions to the capital stock of the corporation, at such time or times, and at such place or places as they may determine, after having given at least thirty days' notice in a news-

(a) See art. 4132.

(b) See art. 4135.

(c) See art. 4145 *et seq.*

(d) See art. 4219 *et seq.*

paper published or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books, which books may be kept open till the whole amount of capital stock is subscribed. (Ib., § 14; P. D., 5945.)

ART. 579. Quorum of Directors—Annual Election of.—A majority of the directors or trustees shall constitute a quorum, and be competent to fill vacancies in the board, and to transact all business of the corporation. (a). An annual election shall be held for directors or trustees, at such time and place as the by-laws of the corporation may require. (Ib., § 15; P. D., 5946.) (b)

ART. 580. Election of Officers.—The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer and such other officers as they may deem necessary for the corporation. (Ib., § 16; P. D. 5947.) (c)

ART. 581. By-laws—Adoption and Amendment of.—The directors or trustees may adopt by-laws for the government of the corporation; (d) but such by-laws may be altered, changed or amended by a majority vote of the stockholders at any election or special meeting ordered for that purpose by the directors or trustees, on a written application of a majority of the stockholders or members. (Ib. § 17; P. D. 5948.) (e)

ART. 582. Increase of Number of Directors.—All corporations heretofore created and now in existence under any law of this State are hereby authorized to increase the number of directors or trustees of any such corporation. (Ib., § 18; P. D. 5949.) (f)

ART. 583. Failure to elect Directors.—In case it should happen that an election for directors or trustees should not be held on the day appointed by the by-laws of any corporation, such corporation shall not for that reason be deemed to be dissolved, but it shall be lawful on any other day to hold a meeting and elect its directors or trustees in such manner as shall be prescribed by the by-laws thereof. (Ib., § 19; P. D. 5950.) (g)

(a) See art. 4160.

(b) See art. 4125.

(c) See art. 4131.

(d) See arts. 4135, 4136.

(e) See art. 4137.

(f) See art. 575, (8), *ante*.

(g) See art. 4129.

ART. 584. Trustees of Religious Corporations.—The secular affairs of a religious corporation shall be under the control of a board of trustees to be elected by the members of such corporation, and the title to all property of any such corporation shall vest in such trustees. (Ib., § 20; P. D. 5951.)

ART. 585. Powers of Directors—Disposition of unsubscribed Stock.—The directors or trustees shall have the general management of the affairs of the corporation, (*a*) and may dispose of the residue of the capital stock at any time remaining unsubscribed in such manner as the by-laws may prescribe. (Ib., § 21; P. D. 5952.)

ART. 586. Stock Books and Records—Open to Stockholders.—They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions, (*b*) and their books and records shall, at all reasonable times, be open to the inspection of any and every stockholder. (Ib., § 21.) (*c*)

ART. 587. Reports to Stockholders—Declaration of Dividends.—They shall, also, when required by one-third of the stockholders thereof, present reports in writing of the situation and amount of business of the corporation, (*d*) and declare and make such dividends of the profits of the business of the corporation as they shall deem expedient, or as the by-laws may prescribe. (Ib., § 21.) (*e*)

ART. 588. Acceptance of these Provisions by existing Corporations.—Any corporation heretofore organized and now in existence under any general or special law of the Republic or State of Texas may, by a vote of its board of directors, accept any or all the provisions of this title, and have and exercise all the rights, power and privileges conferred by this title, by filing a copy of their acceptance with the Secretary of State; whereupon, that portion of its charter inconsistent with this title, or the portion accepted, shall cease to be applicable to such corporation; and it shall have the exclusive right to carry out the objects of said corporation, as described in its act of incorporation, or certificate, filed with the Secretary of State, if acting under a general law within the limits or boundaries described in said act of incorporation, or certificate, as the case may be, without any limitation as to time, and shall possess all the privileges and franchises conferred by its act of incorporation or certificate filed with the Secre-

(*a*) See art. 4130.

(*b*) See arts. 4116, 4117.

(*c*) See arts. 4117, 4121, 4141.

(*d*) See arts. 4150, 4151.

(*e*) See arts. 594, 4133.

tary of State, not abandoned in the copy of acceptance of any or all the provisions of this title. (Ib., § 22; P. D. 5953.)

ART. 589. Corporations restricted to Legitimate Objects.—No corporation created under the provisions of this title shall employ its stock, means, assets, or other property, directly or indirectly, for any other purpose whatever, than to accomplish the legitimate objects of its creation. (Ib., § 23; P. D. 5954.) (a)

ART. 590. Stock, Personalty and how Transferable.—The stock of any corporation created under this title shall be deemed personal estate; and shall be transferable only on the books of the corporation in such manner as the by-laws may prescribe. (Ib., § 24; P. D. 5955.) (b)

ART. 591. Payment of Calls.—The board of directors or trustees of any corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as may be required by the by-laws. (Ib., § 25; P. D. 5956.) (c)

ART. 592. Continued—Forfeiture of Stock for Non-Payment.—If any stockholder shall neglect to pay any installment, as required by the board of trustees, the directors or trustees may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors or trustees have caused a notice in writing to be served on him personally, or by depositing the same in the post-office, properly directed to him at the post-office nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same his stock and all previous payments thereon will be forfeited for the use of the company; which notice may be served, as aforesaid, at least thirty days previous to the day on which such payment is required to be made. (Ib., § 26, P. D. 5957.) (d)

ART. 593. Corporation may sue its Members.—All bodies corporate may sue for, recover and receive from their respective members, all arrears or other debts, dues or other demands, which now are, or hereafter may be owing to them, in like mode, manner and form, as they might sue for, recover and receive the same from any person not a member of their body. (Ib., § 27; P. D. 5958.)

(a) See art. 4142.

(b) See art. 4138.

(c) See art. 4139.

(d) See art. 4140.

ART. 594. Fraudulent Dividends—Liability of Directors.—If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted, as long as they shall respectively continue in office. The amount for which they shall all be so liable shall not exceed the amount of such dividend; and if any of the directors shall be absent at the time of making the dividend, or shall object thereto at the time such dividend is declared, and shall file their objections in writing with the secretary or other officer of the corporation having charge of the books, they shall be exempted from said liability. (Ib., § 28; P. D. 5959.) (a)

CHAPTER 4.

MISCELLANEOUS PROVISIONS.

ARTICLE

595. Stockholders made liable on execution.
 596. Names of stockholders to be furnished.
 597. Principal office to be kept in State.
 598. Misnomer of corporation not to vitiate grants, etc.
 599. Estoppel to deny corporate existence.

ARTICLE

600. Corporation may convey lands, how.
 601. Authentication of corporate records as evidence.
 602. Organizations under act of 1871 validated.
 603. Business firms to give notice of intention to incorporate.

ART. 595. Stockholders made liable on Execution.—If any execution shall have been issued against property or effects of a corporation, except a railway or a religious or charitable corporation, and there cannot be found any property whereon to levy such execution, then the execution may be issued against any of the stockholders to an extent equal to the amount of stock unpaid; but no execution shall issue against any stockholder, except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court, after reasonable notice in writing to the person or persons sought to be charged; and upon such motion, such court may order execution to issue accordingly; or the plaintiff in execution may proceed by action to charge the stockholders with the amount of his judgment, in accordance with the liability of the stockholders. (P. D., 5960.) (b)

(a) See art. 4133.

(b) See art. 4143.

ART. 596. Names of Stockholders to be furnished.—The secretary or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney, with the names and places of residence of the stockholders as far as known, and the amount of stock held by each, as shown by the books of the corporation. (P. D., 5961.)

ART. 597. Principal Office to be kept in State.—Each corporation or joint stock company, of every description, whether organized and acting under a special charter or general law of the State, shall keep its principal office within this State. (P. D., 5962.) (a)

ART. 598. Misnomer of Corporation not to vitiate Grants, etc.—No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, device [devise] or bequest to the same. (P. D., 5965.)

ART. 599. Estoppel to deny Corporate Existence.—No person who assumes an obligation to an ostensible corporation as such, shall resist the enforcement of such obligation on the ground that there was in fact no such corporation, until that fact has been adjudged in a direct proceeding had for the purpose.

ART. 600. Corporation may convey Lands, how.—Any corporation may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or the presiding member or trustee of said corporation; and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. (P. D., 5966.)

ART. 601. Authentication of Corporate Records as Evidence.—The records of any company incorporated under the provisions of any statute of this State, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceeding to which such corporation may be a party. (P. D., 5967.)

ART. 602. Organizations under Act of 1871, validated. All articles of association filed in the State department in accordance with the provisions of an act entitled "An act concerning private corporations," purporting to have been passed December 2, 1871, are hereby validated as fully as if filed under the provisions of this title.

(a) See art. 4115.

ART. 603. Business Firms to give Notice of Intention to Incorporate.—Whenever any banking, mercantile, or other business firm desire to become incorporated without a change of the firm name, such firm shall, in addition to the notice of dissolution required at common law, give notice of such intention to become incorporated, for at least four successive weeks, in some newspaper published at the seat of State government, and in the county in which such firm has its principal business office, if there be a newspaper in such county, and if not, then in some newspaper in some adjoining county, and until such notice shall have been so published for the full period above named, no change shall take place in the liability of such firm or the members thereof.

CHAPTER 5.

OF THE DISSOLUTION OF PRIVATE CORPORATIONS.

ARTICLE

604. Corporation, how dissolved.
605. Continued.—By failure to begin operations in three years.
606. Winding up of business—Directors, trustees.

ARTICLE

607. Continued.—Liability of such trustees.
608. Liability of stockholders to creditors.
609. Continued.—Contribution among stockholders.
610. Continued.—Limit of liability.

ART. 604. Corporation, how dissolved.—A corporation is dissolved:

1. By the expiration of the time limited in its charter.
2. By a judgment of dissolution rendered by a court of competent jurisdiction. (P. D. 5968.)

ART. 605. Continued—By Failure to begin Operations in three Years.—Every corporation created under this title, or any general law of this State, shall commence active operations within three years after filing its charter with the Secretary of State, and in default thereof, said corporation shall be dissolved and its charter become void. (P. D. 5969.) (a)

ART. 606. Winding up of Business—Directors, Trustees.—Upon the dissolution of any corporation already created by or under the laws of this State, unless a receiver is appointed by some court of competent authority, the president and directors or managers of the affairs of the corporation at the time of its dissolution, by what-

(a) See art. 4278.

ever name they may be known in law, shall be trustees of the creditors and stockholders of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution as far as such money and property will enable them; and for this purpose they may maintain or defend any judicial proceedings. (P. D. 5970.) (a)

ART. 607. Continued—Liability of such Trustees.—The trustees mentioned in the preceding article shall be severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come to their hands. (P. D. 5971.) (b)

ART. 608. Liability of Stockholders to Creditors.—If any corporation created under this title or any general statute of this State, except railway, or charitable or religious corporations, be dissolved, leaving debts unpaid, suit may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the corporation in such suit, and if judgment be rendered and execution satisfied, the defendant or defendants may sue all who were stockholders at the time of dissolution for the recovery of the portion of such debt for which they were liable, and the execution upon the judgment shall direct the collection to be made from property of each stockholder respectively; and if any number of stockholders, defendants in the case, shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount owned by the plaintiff at the time the company dissolved. (P. D. 5972.)

ART. 609. Continued—Contribution among Stockholders.—If any stockholder pay more than his due proportion of any debt of the corporation, he may compel contribution from the other stockholders by action. (P. D. 5973.)

ART. 610. Continued—Limit of Liabilities.—No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock. (P. D. 5974.) (c)

(a) See art. 4264.

(b) See art. 4264.

(c) See art. 4143.

TITLE 29.

DISTRICT AND COUNTY COURTS, AND PRACTICE THEREIN.

- CHAPTER II—Of pleading in general.
 IV—Of the venue of suits.
 VI—Of process and returns.
 VIII—Of the pleadings of the defendant.

CHAPTER 2.

OF PLEADING IN GENERAL.

ARTICLE 1190. Pleading charter or act of incorporation.

ART. 1190. Pleading Charter or Act of Incorporation.—
 In pleading the charter or act of incorporation of any corporation, public or private, it shall not be necessary to set out at length such charter or act of incorporation, but it shall be sufficient to allege that such corporation was duly incorporated, and such allegation by either party shall be taken as true, unless denied by the affidavit of the adverse party, his agent or attorney. (Act Feb. 14, 1860, p. 116, § 1; P. D., 1518, as amended by Laws 1883, Regular Session, ch. 1, p. 103.)

CHAPTER 4.

OF THE VENUE OF SUITS.

ARTICLE 1198. Suits against railroad corporations.

ART. 1198. Suits against Railroad Corporations.—No person who is an inhabitant of this State shall be sued out of the county in which he has his domicile, except in the following cases to wit: * * * * *

8. Where the foundation of the suit is some crime, or offense, or trespass, for which a civil action in damages may lie, in which case the suit may be brought in the county where such crime, or offense, or

trespass was committed, or in the county where the defendant has his domicile. (a.) * * * * *

19. Suits in behalf of the State for the forfeiture of the charters of private corporations chartered by act of the Legislature, shall be commenced in the district court of the county in which the seat of government may be. (Act Aug. 21, 1876, p. 312, § 12.) * * *

20. Suits on behalf of the State to forfeit land fraudulently or colorably alienated by railroad companies in fraud of the rights of the State, under the laws granting lands to railway companies, shall be brought in the county in which the seat of government may be. (Const., art. 14, § 5.) * * * * *

21. Suits against any private corporation, association or joint stock company may be commenced in any county in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated. And suits against a railroad corporation, or against any assignee, trustee or receiver, operating its railway, may also be brought in any county through or into which the railroad of such corporation extends or is operated. (Act March 21, 1874, p. 31; Act Feb. 21, 1879; P. D., 6011*f*, 6011*h*.) (b)

CHAPTER 6.

OF PROCESS AND RETURNS.

ARTICLE 1223. Service of process in suits against corporations.

ART. 1223. Service of Process in Suits against Corporations.—In suits against any incorporated company or joint stock as-

(a) Against persons committing trespass, suit may be brought in the county wherein the trespass was committed. (Pasch. Dig., art. 1423). A railroad company is a person within the meaning of this act, and is liable to be sued in any county in which its agents may have committed a trespass. *Bartee vs. Railway Co.*, 36 Tex., 648. ²

(b) The title to the act of March 21, 1874, conforms to the requirements of the Constitution. The act is operative, and is the law of the State as to venue in suits against railroad companies. *Breen Texas, etc., Ry. Co.*, 44 Tex., 302. This act applied to an action pending when enacted. *Houston, etc., R. Co., vs. Graves*, 50 Tex., 181. Section one of this act which authorizes suit against a railway company in any county where it had an agency, was not repealed by the first section of a subsequent act of the same Legislature. (Act of April 17, 1874, Laws 1874, p. 107.) The first act was intended to extend the right to institute suits more particularly against railroad companies in counties other than that of the domicile of the company; while the second act was designed to extend a like remedy to any association, joint stock or insurance company. *Houston, etc., R. Co. vs. Ford*, 53 Tex., 364.

sociation, the citation may be served on the president, secretary or treasurer of such company or association, or upon the local agent representing such company or association in the county in which suit is brought, or by leaving a copy of the same at the principal office of the company during office hours. (Acts, March 21, 1874, p. 32 § 2; April 17, 1874, p. 10, § 2; Feb. 6, 1854, p. 53, § 9; Feb. 7, 1854, p. 55, § 4; P. D. 1430, 4888.) (a)

CHAPTER 8.

OF THE PLEADINGS OF THE DEFENDANT.

ARTICLE 1265. Denial of incorporation to be verified by affidavit.

ART. 1265. Denial of Incorporation to be verified by Affidavit.—An answer setting up any of the following matters, unless the truth of the pleadings appear of record, shall be verified by affidavit: * * * * * * * *

7. That the plaintiff or the defendant, alleged in the petition to be duly incorporated, is duly incorporated as alleged. (Act of April 2, 1874, p. 52, § 1; P. D. 6829*c*.)

(a) In general, as to service of process, see *Ward vs. Latimer*, 2 Tex., 247; *Burleson vs. Henderson*, 4 Tex., 51, 53; *Little vs. Marler*, 8 Tex., 108; *Saunders vs. Gilmer*, 8 Tex., 296; *Cumming vs. Rice*, 9 Tex., 527; *Thomas vs. Womack*, 13 Tex., 582; *Dikes vs. Monroe*, 15 Tex., 237; *Kirk vs. Murphy*, 16 Tex., 654; *Anderson vs. Brown*, 16 Tex., 554; *Andrews vs. Ennis*, 16 Tex., 46; *Powell vs. Wilson*, 16 Tex., 60; *Thompson vs. Griffis*, 19 Tex., 115; *Wright vs. Wilmot*, 22 Tex., 398. While the office of a corporation created in this State and carrying on its business here, is kept, as required by law, at some place on the line of the road, and a party has full opportunity to obtain service upon the company, as provided by statute, it cannot be truly averred that the corporation is beyond the limits of the State. *Sherman vs. Buffalo Bayou, etc.*, R. Co., 21 Tex., 349. The Texas and Pacific Railway Company is not a non-resident, and service upon the attorney of record of writ of error is insufficient. *Stephenson vs. Texas and Pacific R. Co.*, 42 Tex., 162. Service of process made "by leaving with the within named defendant, the H. & T. C. R. R. Co., at their chief office in Houston," a true copy of the citation and the accompanying certified copy of plaintiff's petition, held valid. The second section of the act of March 21, 1874, entitled "An act to fix the venue in certain cases," and the second section of the act of April 17, 1874, entitled "An act to confer jurisdiction in certain cases," did not repeal by implication the provisions of art. 4888 of Paschal's Digest, but were intended to be cumulative. *Houston, etc., R. Co., vs. Willie*, 53 Tex., 318. Service on one alleged to be agent of the defendant company, at an office of the defendant, is sufficient to hold the defendant to answer the petition, and no judicial ascertainment of the agency is required to authorize a judgment by default. *Houston, etc., R. Co., vs. Burke*, 55 Tex., 323. Service upon directors, as trustees, after sale of corporate property. *Witherspoon vs. Texas Pacific R. Co.*, 48 Tex., 309. Service upon one who executed a note as president of the company, the petition averring that he was still president, was held proper. *Galveston, etc., R. Co., vs. Shepherd*, 21 Tex., 279.

TITLE 32.

COURTS—JUSTICES'.

CHAPTER 5—Of the venue.

9—Of the pleadings.

CHAPTER 5.

OF THE VENUE.

ARTICLE 1556. Suits against corporations where brought.

ART. 1556. Suits against Corporations where brought.

Every suit in the court of a justice of the peace, shall be commenced in the county and precinct in which the defendant, or one or more of several defendants resides except in the following cases, and such other cases as are or may be provided by law: * * * * *

10. Suits against private corporations, associations and joint stock companies may be brought in any county and precinct in which the cause of action, or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated.

11. Suits against railroad and canal companies, or the owners of any line of mail stages or coaches, for any injury to person or property upon the road, canal or line of stages or coaches of the defendant, or upon any liability as a carrier, may be brought in any precinct through which the road, canal or line of stages or coaches may pass, or in any precinct, where the route of such railroad, canal, stages or coaches may begin or terminate. (Act of Aug. 17, 1876, § 8.)

CHAPTER 9.

OF THE PLEADINGS.

ARTICLE 1574. Denial of incorporation to be verified by affidavit.

ART. 1574. **Denial of Incorporation to be verified by Affidavit.**—An answer or other pleading, setting up any of the fol-

lowing matters, shall be in writing and signed by the party or his attorney, and verified by affidavit: * * * * *

7. That the plaintiff or defendant, suing or sued as a corporation, is not a corporation as alleged.

TITLE 39.

OF EXECUTIONS.

ARTICLE

2294. Levy on shares on stock, how made.

ARTICLE

2297. Shares of stock may be sold

ART. 2294. **Levy on Shares of Stock, how made.**—A levy on the stock of any corporation or joint stock company is made by leaving a notice thereof with any officer of such company. (Act March 13, 1875, p. 102.)

ART. 2297. **Shares of Stock may be sold.**—Shares of stock in any joint stock or incorporated company may be sold on execution against the person owning such stock. (Ib.)

TITLE 47.

GUARDIAN AND WARD.

CHAPTER 14.

OF CLAIMS AGAINST THE ESTATE.

ARTICLE

2624. Authentication of claim of corporation.

2625. Continued.

ARTICLE

2626. Continued.

ART 2624. **Authentication of Claim of Corporation.**—When a claim belongs to a corporation, the cashier, treasurer or managing agent of such corporation shall make the affidavit required to authenticate it. (Act of Aug. 18, 1876, p. 189, § 156.)

ART. 2625. **Continued.**—When an affidavit authenticating a claim is made by an officer of a corporation, an executor, administra-

tor, trustee, assignee, agent or attorney, it shall be sufficient to state in such affidavit "that he has made diligent inquiry and examination, and that he does verily believe that nothing has been paid and delivered towards the satisfaction of such claim, except the amount credited, (if any), that there are no counterclaims which have not be allowed, and that the sum claimed is justly due." (Ib., § 157.)

ART. 2626. **Continued.**—The affidavit authenticating a claim may be made before any officer authorized to administer oaths.

TITLE 48.

HEADS OF DEPARTMENT.

CHAPTER 5.

OF THE ATTORNEY-GENERAL.

ARTICLE
2805. Duty to enforce forfeiture of charters.

ARTICLE
2806. To restrain abuse of corporate powers.

ART. 2805. **Duty to enforce Forfeiture of Charters.**—It shall be the duty of the Attorney-General, unless otherwise expressly directed by law, whenever sufficient cause exists therefor, to seek a judicial forfeiture of the charters of private corporations; and he shall at once take steps to seek such forfeiture in all cases where satisfactory evidence is laid before him that any corporation receiving State aid has by the non-performance of its charter conditions or the violations of its charter, or by any act or omission, mis-user or non-user, forfeited its charter or any rights thereunder. (Act August 21, 1876, p. 312, § 1.)

ART. 2806. **To restrain Abuse of Corporate Powers.**—He shall also especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such legal action as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. (Const., art. 4, § 22.)

TITLE 52.

OF INJURIES RESULTING IN DEATH—ACTIONS FOR.

ARTICLE

2899. Actions may be brought in what cases.
 2900. For what acts.
 2901. Exemplary damages recovered.
 2902. Criminal prosecution need not precede action.
 2903. Beneficiaries in this action.
 2904. Continued—Any one or all may sue.

ARTICLE

2905. Continued—Executor may sue.
 2906. Suit does not abate by death of either party.
 2907. Suit abates, when.
 2908. Executor of defendant a party, when.
 2909. Damages.

ART. 2899. Action may be brought in what Cases.—An action for actual damages on account of injuries causing the death of any person, may be brought in the following cases:

1. When the death of any person is caused by the negligence or carelessness of the proprietor, owner, charterer or hirer of any railroad, steamboat, stage coach or other vehicle for the conveyance of goods or passengers, or by the unfitness, gross negligence or carelessness of their servants or agents.

2. When the death of any person is caused by the wrongful act, negligence, unskillfulness or default of another. (Act Feb. 2, 1860, p. 32, § 1; P. D., 15.) (a)

ART. 2900. For what Acts.—The wrongful act, negligence, carelessness, unskillfulness or default mentioned in the preceding article must be of such a character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury. (Ibid.)

ART. 2901. Exemplary Damages recovered.—When the death is caused by the willful act or omission, or gross negligence of the defendant, exemplary as well as actual damages may be recovered. (Const., art. 16, § 26.) (b)

(a) The act of Feb. 2, 1860, authorizing suit in this class of cases, was not abrogated by the Constitution of 1869 on the same subject. *Houston, etc., R. Co., vs. Moore*, 49 Tex., 31, approving *Houston, etc., R. Co., vs. Bradley*, 45 Tex., 171. In suits for damages for causing death, the right to such actions being given by statutes, parties who seek to avail themselves of their benefit must be governed by their provisions. *Galveston, etc., R. Co., vs. Le Gierse*, 51 Tex., 189. Damages cannot be recovered for the death of an employe while in the performance of a service not within the scope of his duty, if his opportunity for observing the danger was equal to that of the company; nor is the company guilty of negligence if the performance of an unusually dangerous service was directed for good reasons, as for the safety of passengers. *Houston, etc., R. Co., vs. Fowler*, 56 Tex., 453. An action for actual damage lies in favor of the parent, etc., against a corporation for negligently causing death, whether an action ever accrued in favor of the deceased or not. Such an action lies in case of instantaneous death. *International and Great Northern R. Co. vs. Kindred*, 57 Tex., 491. As to negligence, and contributory negligence, see note, art. 4249, subdiv. (12) *post*; note to art. 4215, *post*.

(b) Section 26 of art. 16 of the Constitution of 1876, giving exemplary damages, is cumulative of the act of the Legislature, (Paschal's Dig., arts. 15-18), together, they give compensatory and ex-

ART. 2902. Criminal Prosecution need not precede Action.—The action may be commenced and prosecuted, although the death shall have been caused under such circumstances as amounts in law to a felony, and without regard to any criminal proceeding that may or may not be had in relation to the homicide. (*Ibid.*)

ART. 2903. Beneficiaries in this Action.—The action shall be for the sole and exclusive benefit of the surviving husband, wife, children and parents of the person whose death shall have been so caused, and the amount recovered therein shall not be liable for the debts of the deceased. (*Ibid.*, § 2; P. D., 16.) (*a*)

ART. 2904. Continued—Any one or all may sue.—The action may be brought by all of the parties entitled thereto, or by any one or more of them for the benefit of all. (*Ibid.*) (*b*)

ART. 2905. Continued—Executor may sue.—If the parties entitled to the benefit of the action shall fail to commence the same within three calendar months after the death of the deceased, it shall be the duty of the executor or administrator of the deceased to commence and prosecute the action, unless requested by all of the parties entitled thereto not to prosecute the same. (*Ibid.*) (*c*)

emplary damages. Galveston, etc., R. Co., vs. Le Gierse, 51 Tex., 189. Exemplary damages for causing the death of a passenger, *Ib.* For causing the death of an employe. Houston, etc., R. Co., vs. Cowser, 57 Tex., 293. Where actual and exemplary damages are claimed, the better practice is, that they should be claimed by proper allegations, in the nature of distinct counts on different causes of action. The court should instruct the jury according to the facts, and as to the law of governing them as to the measure of damages; and the jury should, in their verdict, ascertain what are actual and what are exemplary damages. Galveston, etc., R. Co., vs. Le Gierse, 51 Tex., 189. A failure of the jury to thus discriminate will not, of itself, authorize the reversal of the judgment, when the point is, for the first time, raised in the Supreme Court. Texas and Pacific R. Co., vs. Casey, 52 Tex., 112.

(*a*) A compromise by the natural guardian of a minor's claims under the statute, will not affect his rights. Houston, etc., R. Co., vs. Bradley, 45 Tex., 171. Declarations of widow in such a case that the money would be invested for the benefit of the children, excluded, *Ib.*

(*b*) Only one suit can be brought under the statute. Houston, etc., R. Co. vs. Bradley, 45 Tex., 171; Galveston, etc., R. Co. vs. LeGierse, 51 Tex., 189. The action by whomsoever brought is for the benefit of all and to the exclusion of none of the parties interested. *Ib.* Houston, etc., R. Co. vs. Moore, 49 Tex., 31. The better practice is to join all entitled to participate in the damages as parties; but should any be omitted, the petition should state who are entitled to share in the recovery. When it is evident, from the petition, that all are not so described, exceptions on that account should be allowed. Where the pleadings show the parties so entitled to share in the judgment, and an apportionment of the damages among the parties is not made in the judgment, such failure is error. Houston, etc., R. Co. vs. Moore, 49 Tex., 31. The amount so recovered must be apportioned by the jury (or court) among those entitled to the judgment. If all the parties in interest are not before the court as actual plaintiffs, the suit should proceed in the name of one or more, for the use also, of all others interested. Non-joinder of parties apparent of record can be reached by demurrer. Galveston, etc., R. Co. vs. LeGierse, 51 Tex., 189. It is not material whether suit is brought in the name of the guardian for his ward, or in the name of the ward by his guardian. Houston, etc., R. Co. vs. Bradley, 45 Tex., 171. A widow who had compromised her right of action is not a necessary party to a suit by her children. Houston, etc., R. Co. vs. Bradley, 45 Tex., 171.

(*c*) The statute does not limit the right to sue after three months to the administrator or executor. Houston, etc., R. Co. vs. Bradley, 45 Tex., 171.

ART. 2906. Suit does not abate by Death of either Party.—The action shall not abate by the death of either party to the record if any person entitled to the benefit of the action survives. If the plaintiff die pending the suit, when there is only one plaintiff, some one or more of the parties entitled to the money recovered may, by order of the court, be made plaintiff and the suit be prosecuted to judgment in the name of such plaintiff for the benefit of the persons entitled. (Ibid., § 4; P. D. 18.) (a)

ART. 2907. Suit abates, when.—If the sole plaintiff die pending the suit, and he is the only party entitled to the money recovered the suit shall abate.

ART. 2908. Executor of Defendant a Party, when.—If the defendant die pending the suit, his executor or administrator may be made a party and the suit be prosecuted to judgment, as though such defendant had continued alive. The judgment in such case, if rendered in favor of the plaintiff, shall be, to be paid in due course of administration. (Ibid.)

ART. 2909. Damages.—The jury may give such damages as they may think proportioned to the injury resulting from such death; and the amount so recovered shall be divided among the persons entitled to the benefit of the action, or such of them as shall then be alive, in such shares as the jury shall find by their verdict. (Ibid., § 2; P. D. § 16.) (b)

(a) See R. S., art. 1255, and in connection therewith *Watson vs. Loop*, 12 Tex., 14; *Taney vs. Edwards*, 27 Tex., 225; *Gibbs vs. Belcher*, 30 Tex., 79; *Harrison vs. Moseley*, 31 Tex. 608.

(b) It is a question whether, under the statute (Paschal's Dig., 15; R. S., arts. 2899, 2909) with proper allegations, damages allowed "proportioned to the injury resulting from such death" are restricted to loss to parents during the minority of the child killed, for which suit may be brought. *Houston, etc., R. Co. vs. Nixon*, 52 Tex., 19. In an action for damages by the surviving parent (mother) for the death of her adult son, evidence of her poverty is admissible to show the reasonable expectation of pecuniary assistance from the deceased, but not for the purpose of increasing the amount of damages. *International, etc., R. Co. vs. Kindred*, 57 Tex., 491. Damages may be recovered for the negligent killing of plaintiff's son, although the son was over 21 years of age at the time of his death. The measure of actual damages in such a case is the actual pecuniary injury which resulted from the act complained of. The means of estimating this actual pecuniary injury, stated. *Houston, etc., R. Co. vs. Cowser*, 57 Tex., 293. In such a case the jury are not limited in damages to the present value of an annuity for the probable duration of life of the plaintiff for the amount shown to have been actually furnished her per annum by the deceased son. *International, etc., R. Co. vs. Kindred*, 57 Tex., 491. Measure of damages in case of personal injuries to employes and others not passengers. See note to art. 4249 subdiv. (12) *post*. Measure of damages in case of injuries to passengers. See note to art. 4215, *post*. As to apportionment, see note (b) p. 47, *ante*.

TITLE 57.

JURIES IN CIVIL CASES.

CHAPTER 1.

OF QUALIFICATIONS AND EXEMPTIONS OF JURORS.

ARTICLE 3014. Station agents exempt.

ART. 3014. **Station Agents Exempt.**—The following persons shall be exempt from jury service when they may claim such exemption:

* * * * *

6. All publishers of newspapers, schoolmasters, druggists, undertakers, telegraph operators, railroad station agents, ferrymen, and all millers engaged in grist, flouring and saw-mills. (Act, Aug. 1, 1876, p. 78, § 25.)

7. All presidents, vice-presidents, conductors and engineers of railroad companies when engaged in the regular and actual discharge of the duties of their respective positions.

TITLE 59.

LAWS.

CHAPTER 4.

OF THE CONSTRUCTION OF LAWS.

ARTICLE 3140. Meaning of certain words.

ART. 3140. **Meaning of Certain Words.**—The following
H. R.—4.

meaning shall be given to each of the following words, unless a different meaning is apparent from the context:

* * * * *

2. "Person" includes a corporation.

TITLE 62.

LIMITATIONS.

CHAPTER 2.

OF THE LIMITATION OF PERSONAL ACTIONS.

ARTICLE 3202. Action for death to be commenced within one year.

ART. 3202. **Action for Death to be commenced within one Year.**—There shall be commenced and prosecuted within one year after the cause of action shall have accrued, and not afterwards, all actions or suits in court, of the following description:

1. Actions for injuries done to the person of another. (a)

4. Actions for injuries done to the person of another where death ensued from such injuries; and the cause of action shall be considered as having accrued at the death of the party injured.

TITLE 79.

THE PUBLIC LANDS.

CHAPTER 1—Of the public domain.

V—Of land certificates.

XI—Of land reservations.

(a) A statute provided that "all actions for injuries done to a person of another, as of assault, battery, wounding or imprisonment, * * * shall be commenced and sued within one year, next after the cause of such action or suit, and not after." This statute included actions for injuries from accidents on railroads. The classes enumerated in the statute were examples merely, and not designed to restrict its operation. *Tobin vs. Houston, etc., R. Co.*, 56 Tex., 641.

CHAPTER 1.

OF THE PUBLIC DOMAIN.

ARTICLE

3796. No reservation to satisfy grant to railroad company.

3797. Issue of land certificates—Alienation and forfeiture of land.

ARTICLE

3798. Alienation and forfeiture continued.

3799. Fraudulent and colorable alienations.

ART. 3796. No Reservation to satisfy Grant to Railroad Company. No reservation of any part of the public domain, for the purpose of satisfying a grant of lands to any railway company in this State, shall ever be made. (Const. art. 14, § 3.)

ART. 3797. Issue of Land Certificates.--Alienation and Forfeiture of Land. No land certificate shall be issued to such railway company until it shall have equipped, constructed and in running order, at least ten miles of the road, and on the failure of such company to comply with the terms of its charter or alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the State and become a portion of the public domain, and liable to location and survey. (Ib.)

ART. 3798. Alienation and Forfeiture, continued. All lands heretofore or hereafter granted to railway companies, where the charter or law required or shall hereafter require their alienation within in a certain period on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alienated, in conformity with the terms of their charters and the laws under which the grants were made, are hereby declared forfeited to the State and subject to pre-emption, location and survey, as other vacant lands. (Ib., § 5.)

ART. 3799. Fraudulent and Colorable Alienations. All lands heretofore granted to said railroad companies to which no forfeiture was attached on their failure to alienate, are not included in the foregoing clause, but in all such last named cases it shall be the duty of the attorney-general, in every instance where alienations have been or hereafter may be made, to inquire into the same, and if such alienation has been made in fraud of the rights of the State, and is colorable only, the real and beneficial interest being still in such corporation, to institute legal proceedings, in the county where the seat of government is situated, to forfeit such lands to the State, and if such alienation be judicially ascertained to be fraudulent and color-

able as aforesaid, such lands shall be forfeited to the State and become a part of the vacant public domain, liable to pre-emption, location and survey. (Ib.)

CHAPTER 5.

OF LAND CERTIFICATES.

ARTICLE 3877. Railroad certificates.

ART. 3877. Railroad Certificates. Railroad certificates are described as follows, viz :

1. Certificates for six hundred and forty acres granted as a bonus to aid in building of railroads in the State.
2. Certificates for six hundred and forty acres granted as a bonus to railroads, to be located on the odd sections, the even sections being reserved to the state for the school fund. (Act, Jan. 30, 1854.)
3. International certificates issued to the International railroad company, privileged to be located as headright certificates and exempted from taxes for twenty-five years. (Act, March 10, 1875, special laws, pp. 70, 71.)

CHAPTER 11.

OF LAND RESERVATIONS.

ARTICLE
3968. Mississippi and Pacific railroad reserva-
tion opened up.

ARTICLE
3969. Lapsed reservations reserved from loca-
tion.

ART. 3968. Mississippi and Pacific Railroad Reservation Opened up. The Mississippi and Pacific Railroad reservation, created by the act of December 21, 1853, the boundaries of which are defined in said act and in the act of December 21, 1857, shall be considered as opened up and made subject to location, sale and settlement, on and after the first day of January, 1857. (Acts, Aug 26, 1856, Dec. 21, 1857; [special] Dec. 21, 1853, p. 7; P. D. 5038, 5039.)

ART. 3969. Lapsed Reservations reserved from Location. All reservations of the public domain for the benefit of any

railroad or railroad company heretofore made by law, and the right to which reservation has lapsed since January 1, 1872, or may hereafter lapse, are hereby declared then to have been severed from the mass of the public domain, and in the event of forfeiture to the State are expressly reserved from location, except the three million acres of land reserved for constructing a new State capitol and other public buildings, and to actual settlers under the laws, and whenever a pre-emption or homestead donation survey of one hundred and sixty acres or of eighty acres shall be made for any settler, a like quantity shall be made adjoining said pre-emption survey for the public free school fund. (Act, Aug. 17, 1876, p. 168; Acts, Extra Session, 1879, ch. 24.) (*a*)

TITLE 81.

PUBLIC SCHOOL, ASYLUM AND UNIVERSITY LANDS.

CHAPTER 2.

OF THE PUBLIC FREE SCHOOL LANDS.

ARTICLE 4031. Reservation of land for perpetual public school fund.

ART. 4031. Reservation of Land for Perpetual School Fund.—All the alternate sections of land reserved by the State out of grants heretofore made, or that may hereafter be made to railroads,

(*a*) Chapter 155, acts 1879, provides that any railroad company, in whose favor a reservation from the public domain may heretofore have been created by any law, general or special, may surrender its exclusive right to further locate lands within said reservation; and whenever any such railroad company shall file in the office of the Secretary of State, within ninety days from the passage of the act, an instrument in writing, approved as to form by the Attorney-General, relinquishing or surrendering its claim to such reservation, said relinquishment shall, upon the payment of all costs of suit, if one has been instituted, be accepted by the State, instead of a judicial forfeiture of the reservation, and shall be deemed a satisfaction of said suit; and it is especially provided that the lands so relinquished shall be subject to location only under the provisions of law embraced in this chapter. The surrender is not to affect the right of the company to construct its road in accordance with its charter, nor its relation to the laws regulating railroads and granting land subsidies to aid in their construction. Any action taken by any railroad company under the provisions of the act, is to be held to be a complete acceptance of all the provisions of the Constitution applicable to railroads, and of the laws of the State regulating railroads.

or other corporations, of any nature whatever, one-half of the public domain, and all other lands heretofore set apart, or that may hereafter be set apart, for the benefit of public free schools, shall constitute a part of the perpetual public free school fund. (Const., art. 7 § 2.)

TITLE 83.

QUARANTINE.

ARTICLE 4095*a*. Quarantine stations for railroad trains.

ART. 4095*a*. Quarantine Stations for Railroad Trains.— It shall be the duty of all health officers and quarantine authorities to establish stations where they do not now exist, whereat railway trains or any other public or private conveyance coming from any infected port or district and entering within any county, town or city in this State may be stopped, the passengers examined and sworn in accordance with the provisions of this title, and such further action had and taken under such rules as may be prescribed by the Governor and State Health Officer. (New section by ch. 30, Laws, 1883, Regular Session, p. 20.)

TITLE 84.

RAILROADS.

- CHAPTER 1. Of the incorporation of railroad companies.
2. Of amending or changing the charter.
 3. Of the public office and books.
 4. Of the officers of railroad corporations.
 5. Of the by-laws.
 6. Of the stock and stockholders.
 7. Of meetings of directors and stockholders.
 8. Of the right of way.
 9. Of other rights of railroad corporations.
 10. Of restrictions upon, duties and liabilities of railroad companies.
 11. Of collection of debts from railroad corporations.
 12. Of lands of railroad corporations.
 13. Of forfeiture of the charter.

CHAPTER 1.

OF THE INCORPORATION OF RAILROAD COMPANIES.

ARTICLE	ARTICLE
4099. Not less than ten persons may form a company.	4003. Continued.—shall be filed in office of Secretary of State.
4100. Amount of stock which must be subscribed and paid.	4104. Corporate existence begins when.
4101. Articles of incorporation—Shall contain what.	4105. Corporators may proceed to act when.
4102. Continued—Shall be submitted to the Attorney-General.	4106. Limitation of corporate existence.
	4107. Renewal of corporate existence.

ART. 4099. Not less than Ten Persons may form a Company.—Any number of persons, not less than ten, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, maintaining and operating such railroad, by complying with the requirements of this chapter. (Act, Aug. 15, 1876, p. 141, § 1.)

ART. 4100. Amount of Stock which must be subscribed and paid.—No railroad corporation shall be formed until stock to the amount of one thousand dollars for every mile of said road so intended to be built shall be in good faith subscribed, and five per cent. of the amount subscribed paid in to the directors of such proposed company. (Ib.)

ART. 4101. Articles of Incorporation—Shall contain what.—The persons proposing to form a railroad corporation shall adopt and sign articles of incorporation, which shall contain—

1. The name of the proposed corporation.
2. The places from and to which it is intended to construct the proposed railroad and the intermediate counties through which it is proposed to construct the same.
3. The place at which shall be established and maintained the principal business office of the proposed corporation.
4. The time of the commencement and the period of the continuation of the proposed corporation.
5. The amount of the capital stock of the corporation.
6. The names and places of residence of the several persons forming the association for incorporation.
7. The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.
8. The number and amount of shares in the capital stock of the proposed corporation. (Ib. § 3.)

ART. 4102. Continued—Shall be submitted to the Attorney-General.—The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney-General of the State, whose duty it shall be to carefully examine the same, and if he finds them to be in accordance with the provisions of this chapter and not in conflict with the laws of the United States or of this State, he shall attach thereto a certificate to that effect. (Ib. § 2.)

ART. 4103. Continued—Shall be filed in Office of Secretary of State.—When said articles have been examined and certified, as provided in the preceding article, the same shall be filed in the office of the Secretary of State, accompanied by an affidavit in writing, signed and sworn to by at least three of the directors named in such articles, before some officer of the State authorized by law to administer oaths, which affidavit shall state that the amount of one thousand dollars for every mile of such proposed road has been in good faith subscribed, and that five per cent. of the amount subscribed has been actually paid to the directors named in such articles; and the Secretary of State shall cause such articles, together with said affidavit, to be re-recorded in his office, and shall attach a certificate of the fact of such record to said articles and return the same to such corporation. (Ib. § 3.) (a)

ART. 4104. Corporate Existence begins when.—The existence of such corporation shall date from the filing of the articles of incorporation in the office of the Secretary of State, and the certificate of the Secretary of State, under the seal of the State, shall be evidence of such filing. (Ib. § 5.) (b)

ART. 4105. Corporators may proceed to act, when.—When the articles of incorporation have been filed and recorded as herein provided, the persons named as corporators therein shall thereupon become and be deemed a body corporate, and be authorized to proceed to carry into effect the objects set forth in such articles, in accordance with the provisions of this title. (Ibid, § 4.)

(a) A charter provided that the commissioners should receive no subscriptions to the stock of the company unless five per cent. thereof in cash should be paid to them at the time of the subscription; and should they receive subscriptions to said stock without payment, they should be personally liable to pay the same to the corporation when organized. Under this provision it was held that the fact that the commissioners did not exact the five per centum from subscribers could afford no defense to a stockholder who gave his note for the stock. *Blair vs. Rutherford*, 31 Texas 465.

(b) The mere fact, that in a contract with the company the defendant has designated it by a name which is appropriate to a corporate body, does not admit its legal corporate existence, unless it be distinctly stated in the contract that it is an incorporated company. *Holloway vs. The Memphis, etc., R. R. Co.*, 23 Tex., 465. A domestic corporation created by a private act of the Legislature, in order to maintain a suit as plaintiff, must aver and prove, that it is a body corporate, duly constituted by competent authority. A petition, wanting the averment that such plaintiffs are a corporation, is insufficient, *Ib.*

ART. 4106. Limitation of Corporate Existence.—No railroad corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time for periods not longer than fifty years, in the manner provided in the succeeding articles. (Ib., p. 144, § 8.)

ART. 4107. Renewal of Corporate Existence.—The manner of renewing a railroad corporation which has expired by lapse of time shall be as follows :

1. By a resolution in writing adopted by a majority of three-fourths of the stockholders of the company at a regular meeting of the stockholders, which resolution shall specify the period of time for which the corporation is renewed.

2. Those desiring a renewal of the corporation shall purchase the stock of those opposed thereto at its current value.

3. The resolution, when adopted, shall be certified to by the president of the company, and he shall state in his certificate thereto that it was adopted by a majority vote of three-fourths of all the stockholders of said company, at a regular meeting of such stockholders, and that the stockholders desiring such renewal have purchased the stock of those who oppose such renewal, and such certificate shall be attested by the secretary of the company under the seal of the company.

4. The said resolution and certificate shall then be filed and recorded in the office of the Secretary of State, and the renewal of said corporation shall date from said filing. (Ib.) (a)

CHAPTER 2.

OF AMENDING OR CHANGING THE CHARTER.

ARTICLE

4108. Articles of incorporation may be amended.
4109. Manner of amending.
4110. Amendments take effect when.
4111. Special charters not amendable.
4112. Continued.

ARTICLE

4113. Branch line may be projected by amendment.
4114. Continued—Time for completion of branch line.

ART. 4108. Articles of Incorporation may be amended.
Any railroad corporation may amend or change its articles or act of

(a) Chapter 15, acts 1879, requires the department of State to charge and collect a fee of one hundred dollars "for each and every charter, or amendment or supplement thereto of a private corporation, created for the purpose of operating or constructing a railroad, or magnetic telegraph line, or street railway, in a town or city, authorized or required by law to be recorded in said department, to be paid when the same is filed for record."

incorporation in the manner provided in the following articles of this chapter. (Act, Aug 15, 1876, p. 142, § 5.)

ART. 4109. Manner of Amending.—Said amendment or change shall be made in the manner following:

1. It shall be in writing and signed by the president and board of directors of the corporation, and attested by the secretary under the seal of the corporation.

2. It shall be submitted to the Attorney-General as in the case of original articles of incorporation, and examined and certified by him in the same manner.

3. It shall then be filed and recorded in the office of the Secretary of State.

4. In the case of a corporation created by a special act of the Legislature, the said amendment or change, together with the original charter and such amendments and changes as have been made by special act of the Legislature, shall be filed and recorded in the office of the Secretary of State. (Ib., § 5.)

ART. 4110. Amendments take effect when.—Such amendment or change shall be in force from the date of the filing of the same in the office of the Secretary of State in accordance with the provisions of this chapter. (Ib.)

ART. 4111. Special Charters not amendable.—Where, by the special act or articles [of] incorporating any railroad company, any privileges, rights or benefits are conferred upon said corporation, such as it could not claim, exercise or receive under this title or the general laws, then the said corporation shall not be permitted so to amend or change its charter or articles of incorporation as to relieve it from any of the requirements of such special act or acts conferring said privileges, rights or benefits. (Ib.)

ART. 4112. Continued.—Nothing in this chapter shall be so construed as to allow any railroad company incorporated under the provisions of this title or under a special act of the Legislature, to amend or change any part of its charter requiring it to build its road through and to maintain passenger and freight depots in or near any city or town in this State, and within the time named in its charter. (Ib.)

ART. 4113. Branch Line may be projected by Amendment.—Any railroad corporation may, by amendment to its charter, project and provide for the locating, constructing, owning, maintaining and operating a branch line to its original or trunk line of railroad from any point on the said original main or trunk line to any other

point in this State, by a branch line to the main line, making an angle with said main line of at least twenty-five degrees in the general course of said branch line, and also so projected that said branch line shall in no case be so located as to be or become such a line of railroad as that, if the same were owned by another corporation, the corporation owning the main line or any one of the other branches thereof, would be forbidden by the Constitution and laws from consolidating therewith on account of the lines being parallel or competing lines. (Ib., p. 143, § 7.)

ART. 4114. Continued—Time for Completion of Branch Line.—Any such corporation making such amendment to its charter as is authorized by the preceding article, shall complete and put in good running order at least ten miles of its said branch line in said amendment proposed within one year from the filing of such amendment, and an additional extent of at least twenty miles each and every succeeding year until the entire extent of the projected branch line is completed. (Ib.)

CHAPTER 3.

OF THE PUBLIC OFFICE AND BOOKS.

ARTICLE		ARTICLE	
4115.	Public office to be maintained within the State.	4119.	Notice of establishment of public office.
4116.	Corporate meetings, transfers of stock and general business done there.	4120.	Public office the domicile of the corporation.
4117.	Stock books, etc., to be kept there.	4121.	Books open to inspection of stockholders and certain State officers.
4118.	Location of public office may be changed.	4122.	Continued—Legislature may examine.

ART. 4115. Public Office to be maintained within the State.—Every railroad corporation shall have and maintain a public office at some place upon the line of its road in this State. (Const., art. 10, § 3; Act Aug. 15, 1876, p. 144, § 10)

ART. 4116. Corporate Meetings, Transfers of Stock and General Business done there.—All meetings of the stockholders and directors of such corporation shall be held at such public office, and all transfers of stock in such corporation shall be made at such office, and the general business of such corporation shall be transacted at such office. (Ib.)

ART. 4117. Stock Books, etc., to be kept there.—There shall be kept at such office, for the inspection of the stockholders of such corporation, books in which shall be recorded—

1. The amount of capital stock subscribed.
2. The names of the owners of the stock, and the amounts owned by each of them respectively.
3. The amount of stock paid and by whom.
4. The transfer of the stock with the date of transfer.
5. The amount of the assets and liabilities of the corporation.
6. The names and places of residence of its officers. (Ib., § 10.)

ART. 4118. Location of Public Office may be changed.—Every railroad corporation may change at pleasure its public office by publishing a notice of such change in some newspaper published on the line of its road, if any there be, and if not, then in some newspaper in the State, and having a general circulation in the State, for four successive weeks prior to such change. (Act, Feb. 7, 1854; P. D., 4888.)

ART. 4119. Notice of Establishment of Public Office.—Every railroad corporation shall also, as soon as it has in the first instance established its public office, give notice of such establishment by a like publication as required in the preceding article.

ART. 4120. Public Office the Domicile of the Corporation.—The public office of a railroad corporation shall be considered the domicile of such corporation. (Act, Aug. 15, 1876, p. 150, § 32.)

ART. 4121. Books open to Inspection of Stockholders and certain State Officers.—The books of such corporation kept at its public office shall, at all reasonable business hours, be open to the inspection of each stockholder and to any agent or officer of the State whose duty it may be to inspect such books. (Act, Dec. 19, 1857; P. D., 4909.)

ART. 4122. Continued—Legislature may examine.—The Legislature may examine the books of any railroad corporation, by committee or otherwise, as often as may be deemed necessary. (Act, Feb. 7, 1854; P. D., 4906.)

CHAPTER 4.

OF THE OFFICERS OF RAILROAD CORPORATIONS.

ARTICLE

4123. Directors—Number in board.
 4124. Continued—Qualifications of.
 4125. Continued—How elected.
 4126. Continued—Quorum of stockholders at election of.
 4127. Continued—Vacancy in board filled as by-laws direct.
 4128. Continued—Manner of voting for.
 4129. Continued—Omission to elect how supplied.

ARTICLE

4130. Continued—Corporate powers vested in.
 4131. President and subordinate officers, how chosen.
 4132. Continued—Majority necessary to elect.
 4133. Fraudulent dividend—Directors liable for declaring.
 4134. Officers signing liable for false representations in report.

ART. 4123. Directors—Number in Board.—Every railroad corporation shall have a board of directors of not less than seven or more than nine persons. (Act, Aug. 15, 1876, p. 144, § 11.)

ART. 4124. Continued—Qualifications of.—Each director shall be a stockholder in said corporation, and a majority of said directors shall be resident citizens of this State, and shall so remain resident citizens during their continuance as such directors. (Ib., p. 145, § 14.) (a)

ART. 4125. Continued—How Elected.—The board of directors shall be elected by the stockholders of the corporation, at their regular annual meeting in each year, in such manner as may be prescribed in the by-laws of such corporation and by this title, and the directors shall hold their offices until their successors are elected. (Ib., p. 144, § 11.)

ART. 4126. Continued—Quorum of Stockholders at Election of.—It shall require a majority in value value of the stock of such corporation to elect any member of such board of directors. (Ib., p. 145, § 14.)

ART. 4127. Continued—Vacancy in Board filled as By-laws direct.—The by-laws of the corporation shall prescribe the manner and time of electing directors, and the mode of filling a vacancy in the office of director, and such provisions in such by-laws shall not be changed, except at a regular annual meeting of the stockholders,

(a) The failure of the president or vice-president and a majority of the directors of a railroad corporation to reside in this State after the 19th of June, 1858, as required by the act of 1857, is a good ground for the forfeiture of a charter. *State vs. Southern Pacific R. R. Co.*, 24 Tex., 80. The absence of the officers of a corporation created in this State and carrying on its business here, beyond the State, is not the absence of the corporation itself, so as to bring such corporation within the exception contained in the 22d section of the statute of limitations. *Sherman vs. Buffalo Bayou, etc.*, R. Co., 21 Tex., 349. Declarations of directors inadmissible against company. *East Line, etc.*, R. Co., vs. *Garrett*, 52 Tex., 133.

and by a majority in value of the stockholders of such corporation. (Ib., p. 144, § 11.)

ART. 4128. Continued—Manner of Voting for.—In all elections for directors of such corporation, every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he may see fit; and such directors shall not be elected in any other manner (Ib., p. 149, § 29.)

ART. 4129. Continued—Omission to Elect, how supplied. In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of the corporation for that purpose, the stockholders shall meet and hold an election for directors in such manner as shall be provided by the by-laws of the corporation. (Ib., p. 145, § 14.)

ART. 4130. Continued—Corporate Powers vested in.—All the corporate powers of every railroad corporation shall be vested in and be exercised by its legally constituted board of directors. (Ib., p. 144, § 11.)

ART. 4131. President and Subordinate Officers, how chosen.—There shall be a president of the corporation, who shall be chosen from and by the board of directors, and such other subordinate officers as the corporation by its by-laws may designate, who may be elected or appointed, and shall perform such duties and be required to give such security for the faithful performance thereof as the corporation, by its by-laws, shall require. (Ib. p. 145, § 15.)

ART. 4132. Continued—Majority necessary to elect.—In all cases it shall require a majority of the directors to elect or appoint any officer of the corporation. (Ib.) (a)

(a) The representations, declarations and admissions, of the agent of a corporation stand upon the same footing with those of the agent of an individual. As natural persons are liable for wrongful acts and neglects of their servants and agents, done in the course and in the scope of their employment, so are corporations, upon the same grounds, in the same manner, and to the same extent. Nothing is better settled than that the fraud of an authorized agent will invalidate a contract entered into by him, on behalf of his principal, although in perpetrating the fraud, the agent acted without the knowledge or consent of the principal. *Henderson vs. Railroad Co.*, 17 Tex., 560. But an incorporated company cannot be called on to answer in damages in its corporate capacity, for the false and fraudulent representations of its agent, unless it authorized the representations. *Houston, etc., R. Co., vs. McKinney*, 55 Tex., 176, distinguishing *Henderson vs. Railroad Co.*, 17 Tex., 560. A railroad company, receiving property under a contract made by its agent, is estopped thereby from denying the authority of such agent, and will be bound to pay therefor. *Conley vs. Columbus Tap Ry. Co.*, 44 Tex., 579.

ART. 4133. Fraudulent Dividend—Directors liable for declaring.—If the directors of any railroad company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office: *Provided*, That if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall within thirty days thereafter, or after their return, if absent, file a certificate of their absence or objection in writing with the clerk of the company and with the clerk of the county in which the principal office of said company is located, they shall be exempt from said liability, (P. D., 4866.)

ART. 4134. Officers signing liable for False Representations in Report.—If any certificate or report made, or public notice given by the officers of any such company, in pursuance of the provisions of this title, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are officers or stockholders thereof. (P. D., 4887.)

CHAPTER 5.

OF THE BY-LAWS.

ARTICLE

4135. Power to make by-laws.
4136. Each share entitled to a vote upon.

ARTICLE

4137. When and by what vote enacted or amended.

ART. 4135. Power to make By-Laws. Every railroad corporation shall have the power to make such by-laws as it may think proper for the government of such company, the same not being inconsistent with the charter of such company or the laws. (Act, December 19, 1857, p. 95; P. D., 4911.)

ART. 4136. Each Share entitled to a Vote upon. In the enactment of a by-law, the stock-holders of the corporation shall be entitled to one vote for each share of stock held by them, and a stock-holder may vote in person or by a written proxy. (Ib.)

ART. 4137. When and by what Vote enacted and amended. No by-law shall be enacted, altered, amended, added to, repealed or suspended, except at a regular annual meeting of the

stockholders and by a majority vote of two-thirds in value of all the stock of the corporation.

CHAPTER 6.

OF THE STOCK AND STOCK-HOLDERS.

ARTICLE

4138. Railroad stock, personal estate—How transferable.
 4139. Calls made in discretion of directors.
 4140. Sale of stock may be ordered to pay calls.
 4141. Corporate books and papers open to stock-holders.
 4142. Purchase of its own and other stock, and loans to directors prohibited.
 4143. Liability of stock-holders for corporate debts.
 4144. Trustees and pledgees of stock not liable.
 4145. Increase of capital stock.
 4146. Continued—Notice of stock-holders meeting to authorize.
 4147. Continued—Contents of notice.
 4148. Continued—Two-thirds vote required.

ARTICLE

4149. Continued—Record of increase made with Secretary of State.
 4150. Annual meeting—Statement of affairs of corporation.
 4151. Special meeting—Statement of affairs of corporation.
 4152. Loans for construction and equipment, how negotiated.
 4153. President, directors, and other officers may be removed by stock-holders.
 4154. Stock and bonds issued only for value.—Stock issued only at par value.
 4155. Fictitious dividends and increase of stock and debts void.
 4156. Penalty upon officers of corporation for violation of last two sections.

ART. 4138. Railroad Stock, Personal Estate--How transferred. The stock of a railroad corporation shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of company; nor shall any share be transferable until all previous calls thereon have been paid. (Act, Aug. 15, 1876, p. 145, § 17; p. 144, §10.) (a)

ART. 4139. Calls made in Discretion of Directors. The directors of such corporation may require the subscribers to the capi-

(a) The by-laws of the company authorized the transfers of stock in writing by the owner thereof, or on separate paper; and on the delivery thereof to the secretary together with the original certificate of stock, for registration, new stock would be issued to the assignee. The stock certificates contained a recital to the same effect. It was held that the company was estopped from denying that it would hold, for the benefit of the holder of the certificate, the amount of stock therein specified, until it was presented for cancellation, and new stock issued. The non-production of the original certificate of stock was notice to the company that a superior title might be in a third party. *Strange vs. Houston etc. R. Co.*, 53 Tex. 162.

The non-production of the original certificate, by one who receives in lieu thereof new stock, would not be necessarily fatal to his title to the new stock. If he purchased bona fide, his title to the new stock would be good. The remedy of a stock-holder whose stock has been illegally and wrongfully cancelled and new stock in lieu thereof issued to an unauthorized person, is against the company, whether the wrongful issue of the new stock was the result of negligence or fraud. *Baker vs. Wasson*, 53 Tex. 150. Shares in an incorporated company though not visible and capable of manual delivery, having value, possess the characteristics of property. Shares in railway companies are in Texas recognized as personal property, and are subject to execution and sale under process of garnishment. *Baker vs. Wasson*, 53 Tex. 150.

tal stock of corporation to pay the amount by them respectively subscribed, in such manner and in such installments as the directors may deem proper. (Ib. p. 145, § 16.)

ART. 4140. Sale of Stock may be ordered to pay Calls.

If any stockholder shall neglect to pay any installment as required by a resolution or order of the board of directors, the said board shall be authorized to advertise said stock for sale by publication once a week for thirty days in some newspaper published on the line of said road, if there be one, and if not, in some newspaper published in the State having a general circulation in the State, which notice shall name the stock to be sold and the time and place of such sale, and all stock so sold shall be sold at the public office or place of business of such company, and between the hours of 10 o'clock a. m. and 4 o'clock p. m., and to the highest bidder for cash, the proceeds of such sale to be credited to the delinquent stockholder. (Ib., p. 145, § 16.)

ART. 4141. Corporate Books and Papers Open to Stockholders. All stockholders shall at all reasonable hours have access to and may examine all books, records and papers of such corporation. (Ib., p. 145, § 13.)

ART. 4142. Purchase of its own and other Stock, and Loans to Directors, Prohibited.—It shall not be lawful for any railroad corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them, or any of them, to use the same for other than the legitimate purposes of the corporation. (Ib., § 17.)

ART. 4143. Liability of Stockholders for Corporate Debts.—Each stockholder of any railroad corporation shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for any and all debts and liabilities of such corporation until the whole amount of the capital stock of such corporation so held by him shall have been paid. (Ib., p. 146, § 20.)

ART. 4144. Trustees and Pledges of Stock not Liable. No person holding stock in any railroad corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a

(a) The individual members of an incorporated company are deemed strangers to the artificial body created by the act of incorporation, and may maintain their rights of action, of whatever nature, against the company in the same manner as those who are not members. *Henderson vs. Railroad Company*, 18 Tex. 560.

stockholder of such corporation, but the estate or person owning such stock shall be considered as holding the same and liable as a stockholder accordingly. (Ib., § 19.)

ART. 4145. Increase of Capital Stock.—In case the capital stock of any railroad corporation shall be found insufficient for constructing and operating its road, such corporation may, with the concurrence of two-thirds in value of all its stock, increase its capital stock from time to time to any amount required for the purposes aforesaid. (Ib., § 18.)

ART. 4146. Continued—Notice of Stockholders' Meeting to authorize.—Such increase shall be sanctioned by a vote in person, or by written proxy, of two-thirds in amount of all the stock of such corporation, at a meeting of such stockholders called by the directors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served personally or by depositing the same in a post-office directed to the post-office addresses of each of said stockholders severally, postage prepaid, at least sixty days prior to the day appointed for such meeting, and also by advertising the time, place and purpose of such meeting in some newspaper published in each county through or into which the said road shall run or be intended to run (if any newspaper shall be published therein) at least sixty days next preceding the day appointed for such meeting. (Ib.)

ART. 4147. Continued—Contents of Notice.—Such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock. (Ib.)

ART. 4148. Continued—Two-thirds Vote required.—At such meeting the capital stock of the corporation may be so increased by a vote of two-thirds in amount of the capital stock of the corporation, to an amount not exceeding the amount mentioned in the notice so given. (Ib.)

ART. 4149. Continued—Record of Increase made with Secretary of State.—Every order or resolution increasing the capital stock of any such corporation shall be recorded in the office of the Secretary of State, and such increase shall not take effect until such order or resolution has been so recorded. (Ib.)

ART. 4150. Annual Meeting—Statement of Affairs of Corporation.—At the regular annual meeting of the stockholders it shall be the duty of the president and directors to exhibit a full, distinct and accurate statement of the affairs of the corporation to the stockholders. (Ib., p. 145, § 13.)

ART. 4151. Special Meeting—Statement of Affairs of

Corporation.—The stockholders may, at any special meeting of stockholders, require statements similar to the one required by the preceding article from the president and directors, and when so required it shall be the duty of such president and directors to furnish the same. (Ib.)

ART. 4152. **Loans for Construction and Equipment, how negotiated.**—At a regular annual meeting of stockholders, or at a special meeting called for the purpose, the stockholders may, by a majority in value of all the stock of such corporation, determine the amount of loans which may be negotiated by such company for the construction of its railway and its equipments, and fix the rate of interest which may be paid and provided for the security of such loans. (Ib.)

ART. 4153. **President, Directors and other Officers may be removed by Stockholders.**—The stockholders may, by a two-thirds vote in value of all the stock, at any regular or special meeting of stockholders, remove the president or any director, or other officer of such corporation, and elect others instead of those so removed, in accordance with the by-laws of such corporation and this title. (Ib.)

ART. 4154. **Stock and Bonds issued only for Value—Stock issued only at Par Value.**—No railroad corporation shall issue any stock or bonds except for money, labor or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company, except at its par value and to actual subscribers who pay or become liable to pay the par value thereof. (Ib., p. 148, § 25; P. D., 4921.)
(a)

ART. 4155. **Fictitious Dividends and Increase of Stock and Debts Void.**—All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. (Ib.)

ART. 4156. **Penalty upon Officers of Corporation for Violation of last two Sections.**—Every officer or director of a railroad company who shall violate, or consent to the violation of either of the two preceding articles, shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock or indebtedness, as the case may be. (P. D., 4921.)

(a) Watered stock issued under a general resolution of the company is not a valid substitute for *bona fide* paid up stock. *Van Alstyne vs. Houston, etc., R. Co.*, 56 Tex., 373.

CHAPTER 7.

OF THE MEETINGS OF DIRECTORS AND STOCKHOLDERS.

ARTICLE

4157. Annual meeting of directors—Public notice of.
 4158. Annual meeting of stockholders—Public notice of.
 4159. Annual meetings of directors and stockholders at same time and place.
 4160. Quorum of directors and of stockholders.
 4161. Special meetings of stockholders, how called.

ARTICLE

4162. Continued—Public notice of.
 4163. Adjournment of stockholders' meeting from day to day in absence of quorum.
 4164. Proxy must be dated within six months of meeting.
 4165. Stock issued within thirty days of meeting not voted.

ART. 4157. Annual Meeting of Directors—Public Notice of.—The directors of every railroad company shall hold at least one meeting annually, at the public office or place of business of such corporation in this State, public notice of which shall be given thirty days' previously of the time and place of such meeting in some newspaper published in each county through or into which its railway shall run, or be intended to run, if there be any newspaper published in said counties, and if not, then in some newspaper published in the State and having a general circulation in the State. (Const., art. 10, § 3.)

ART. 4158. Annual Meeting of Stockholders—Public Notice of.—The stockholders of every railroad corporation shall hold at least one meeting annually, at the public office or place of business of such corporation in this State, and it shall be the duty of the board of directors to cause public notice to be given of the time and place of such meeting for thirty days previously thereto, as provided in the preceding article. (Act, Aug. 15, 1786, p. 144, § 12.)

ART. 4159. Annual Meeting of Directors and Stockholders at same Time and Place.—The annual meetings of the board of directors and of the stockholders provided for in the two preceding articles, may be called to meet and may be held at the same time and place, in which case one notice shall answer the purpose of both meetings, provided it be so stated in said notice.

ART. 4160. Quorum of Directors and Stockholders.—A majority of the directors of any railroad corporation shall constitute a quorum to transact business, and a majority in value of two-thirds of all the stock owned by such corporation shall constitute a quorum of stockholders to transact business. (Ib., § 12.)

ART. 4161. Special Meetings of Stockholders, how called.—A special meeting of stockholders may be called at any time during the interval between the regular annual meetings of such

stockholders by the directors, or by stockholders owning not less than one-fourth of all the stock of the company. (Ib.)

ART. 4162. Continued—Public Notice of.—When any such special meeting of stockholders is called, notice of the time and place of such meeting shall be given for at least thirty days prior to the time fixed for such meeting, in the same manner as is required in the case of a regular annual meeting, and such notice shall specify the purpose or purposes for which the said special meeting is called, and no other business shall be transacted at such special meeting, except that specified in such notice. (Ib.)

ART. 4163. Adjournment of Stockholders Meeting from Day to Day in Absence of Quorum.—If at any meeting of stockholders a majority in value of the stockholders equal to two-thirds of the stock of such corporation shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days, without transacting any business, and if within said three days two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned and another meeting called, and notice thereof given as hereinbefore provided. (Ib., p. 145, § 14.)

ART. 4164. Proxy must be dated within Six Months of Meeting.—Every proxy from a stockholder shall be dated within six months previous to the meeting of the stockholders at which it is proposed to vote by virtue thereof, and if not dated within such time shall not be voted. (P. D., 4908.)

ART. 4165. Stock issued within Thirty Days of Meeting not voted.—Stock issued within thirty days before any stockholders' meeting shall not entitle the holder to vote thereat, except at the first stockholders' meeting under their articles or act of incorporation for organization; nor shall any stock be voted upon, except in proportion to the amount paid thereon, or secured to be paid, by good security, in addition to the subscription and stock. (P. D., 4928.)

CHAPTER 8.

OF THE RIGHT OF WAY.

ARTICLE	ARTICLE
4166. Right to construct road, intersect and connect with other roads.	4189. Continued—Notice of hearing served on guardian, executor, etc.
4167. Right of way over public lands granted.	4190. Continued—Service of notice of hearing by publication.
4168. Lineal survey may be made.	4191. Continued—Proceedings of the board.
4169. Right of way two hundred feet in width—Trees may be felled.	4192. Continued—Powers of the board.
4170. May construct road across waters, streets, highways, etc.	4193. Continued—Rule of damages
4171. Culverts to be constructed.	4194. Continued—The same.
4172. Navigation not to be obstructed.	4195. Continued—The same.
4173. Assent of municipal corporation to construction required.	4196. Continued—The same.
4174. Assent of owners of highways, plank roads, turnpikes and canals required.	4197. Continued—Finding of the board filed with county judge.
4175. May cross, intersect and unite with other railroads.	4198. Continued—Vacancies upon the board, how filled.
4176. Other railroad corporations to facilitate connection.	4199. Continued—Pay of commissioners.
4177. In case of disagreement with connecting line.	4200. Continued—Costs of notice, how paid.
4178. May take material from adjacent land.	4201. Continued—Costs of proceedings adjudged against either party.
4179. Continued—Value to be first ascertained.	4202. Continued—Objections to award heard by county judge.
4180. Eminent domain may be exercised.	4203. Continued—Award final if objections not filed within ten days.
4181. Continued—Land not to be taken until value ascertained.	4204. Continued—Costs of proceedings of board, how ascertained.
4182. Continued—Mode of condemnation.	4205. Continued—Damages to be paid before taking condemned property.
4183. Continued—Board of three freeholders to assess damages.	4206. Right of way an easement only—Not lost by forfeiture of charter.
4184. Continued—Freeholders to be sworn.	4207. Right of way reserved out of lands granted to railroad companies.
4185. Continued—Board to appoint a day and place for hearing.	4208. Judgment of the court vests right of way.
4186. Continued—Notice of hearing to parties.	
4187. Continued—Service of notice of hearing.	
4188. Continued—Return of notice of hearing.	

ART. 4166. Right to construct road, intersect and connect with other Roads.—Any railroad corporation shall have the right to construct and operate a railroad between any points within this State and to connect at the State line with railroads of other States. (Const., art. 10, § 1.) (a)

(a) A corporation has only such powers as have been conferred on it by its charter, or with which it has been otherwise vested by law. *Rio Grande R. Co. vs. Brownsville*, 45 Tex., 88. A railroad company is not liable for damages resulting from the negligent management of one of the trains used and controlled by construction contractors, for construction purposes, on a portion of its road built under the construction contract and not yet turned over to the railroad company. Test to determine who is a contractor. *Cunningham vs. International R. Co.*, 51 Tex., 503. The duty of ordinary care in supplying a proper road-bed and track of a railroad, and in keeping that road-bed and track in repair, is incumbent on a railroad corporation. It cannot escape the consequences of the negligence of the agents whom it has charged with a duty of that nature; and this, whether the injury complained of as resulting from a defective road-bed is inflicted on a fellow-servant of the corporation or another. *Houston, etc., R. Co., vs. Dunham*, 49 Tex., 181. Injury to employe through open ditch in track. *Houstop, etc., R. Co., vs. Randall*, 50 Tex., 254. When the contractor for the construction of the road is an irresponsible person and it is apparent that he will be unable to complete the road by the desired time, the company may break off the contract without paying him all the profits he would have realized from the construction of the road. *Waco Tap R. Co., vs. Shirley*, 45 Tex., 355.

ART. 4167. Right of Way over Public Lands Granted.—

Every such corporation shall have the right of way for its line of road through and over any lands belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

ART. 4168. Lineal Survey may be Made.—Every railroad corporation shall have the right to cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damage that may be occasioned thereby. (Act, Aug. 15, 1876, p. 147, § 23.)

ART. 4169. Right of Way Two Hundred Feet in Width—Trees may be felled.—Such corporation shall have the right to lay out its road not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its railway, and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation in the manner provided by law. (Ib.) (a)

ART. 4170. May construct Road across Waters, Streets and Highways, etc.—Such corporation shall have the right to construct across, along or upon any stream of water, water-course, street, highway, plank road, turnpike or canal which the route of said railway shall intersect or touch; but such corporation shall restore the stream, water-course, street, highway, plank road, turnpike or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossing in repair. (Ib.)

ART. 4171. Culverts to be constructed.—In no case shall any railroad company construct a road-bed without first constructing the necessary culverts or sluices, as the natural lay of the land requires for the necessary drainage thereof. (Ib.) (b)

(a) It cannot be questioned that a railroad for travel or the transportation of produce through the country at large, is a "public use" for the construction of which private property may be taken, upon adequate compensation therefor being made; therefore, it cannot be said that a railroad company by entering upon and appropriating private property which, by their charter, they are authorized to take, commit a trespass. Where the Constitution does not prescribe a rule for determining what constitutes adequate compensation for property taken for public use, it may be done in any manner that the Legislature may prescribe; provided the means presented are effectual for fairly ascertaining the adequate compensation. *Buffalo, etc., R. Co., vs. Ferris*, 26 Tex., 588.

(b) Injury to land from overflow by reason of the culvert of insufficient capacity. Duty to provide against ordinary rains, but not against extraordinary floods, such as cannot be reasonably

ART. 4172. Navigation not to be obstructed.—Nothing in this chapter shall be so construed as to authorize the erection of any bridge or any other obstruction across or over any stream or water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed, so as to prevent the navigation of such stream or water. (Ib.)

ART. 4173. Assent of Municipal Corporation to Construction required.—Nothing in this chapter shall be so construed as to authorize the construction of any railroad upon or across any street, alley, square or highway of any incorporated city or town without the assent of the corporation of said city or town. (Ib.)

ART. 4174. Assent of Owners of Highways, Plank Roads, Turnpikes and Canals required.—In case of the construction of any railway along highways, plank roads, turnpikes or canals, such railroad corporation shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same or condemn the same under the provisions of law. (Ib.)

ART. 4175. May cross, intersect and unite with other Railroads.—Such corporation shall have the right to cross, intersect, join and unite its railway with any other railway before constructed at any point upon its route and upon the grounds of such other railway corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connection. (Ib.)

ART. 4176. Other Railroad Corporations to facilitate Connection.—Every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming intersections and connections, and grant to such new railway facilities therefor. (Ib.)

ART. 4177. In case of Disagreement with Connecting Line.—If the two corporations cannot agree upon the amount of compensation for any such crossing, intersection or connection, or the

anticipated. *Houston, etc., R. Co., vs. Parker*, 50 Tex., 330. It is a sufficient defense to an action by the widow and children of an employe killed in the wrecking of a train caused by a washout of the track, that the track, culvert, etc., were substantial and durable, and constructed under the supervision of competent engineers, so as to be able to withstand all ordinary storms of the locality. *Houston, etc., R. Co., vs. Fowler*, 56 Tex., 452. Degree of care due from railway companies for the safety of their passengers. Duty to provide against injury to track from an ordinary rainfall, and freshets peculiar to the particular sections of the country. Not bound to provide against extraordinary floods, unknown to common experience, and which could not have been reasonably anticipated in the construction of the road. *International, etc., R. Co., vs. Hallorhe*, 53 Tex., 46. Measure of damages in case of overflow of land. *Houston, etc., R. Co., vs. Knapp*, 51 Tex., 592.

points and manner of the same, their differences shall be adjusted in the manner provided by law. (Ib.)

ART. 4178. May take Material from Adjacent Land.—Any railroad corporation may enter upon and take from any land adjacent to its road, earth, gravel, stone, or other materials, except fuel and wood, necessary for the construction of its railway, paying, if the owner of such land and the corporation can agree thereto, the value of such material taken and the amount of damage occasioned to any such land or appurtenances, and if such owner and corporation cannot agree, then the value of such material and the damage occasioned to such real estate may be ascertained, determined and paid in the manner provided in this chapter. (Ib, § 22.)

ART. 4179. Continued—Value to be first ascertained.—The value of such material and the damage to such real estate shall in all cases be ascertained, determined and paid before such corporation can enter upon and take such material. (Ib.)

ART. 4180. Eminent Domain to be exercised.—If any railroad corporation shall at any time be unable to agree with the owner for the purchase of any real estate or the material thereon required for the purposes of its incorporation or the transaction of its business, for its depots, station buildings, machine and repair shops, or for the right of way, or any other lawful purpose connected with or necessary to the building, operating or running its road, such corporation may acquire such property in the manner provided in this chapter. (Ib, p. 146, § 21.) (a)

ART. 4181. Continued—Land not to be taken until Value ascertained.—No railroad company shall enter upon, except for a lineal survey, any real estate whatever, the same being private property, for the purpose of taking and condemning the same or any material thereon, for any purpose whatever, until the said company shall

(a) When land is appropriated by a railway company without recourse to the method pointed out for condemnation of the same, the owner does not waive his right to compensation by standing by and permitting the company to construct the road over his land. *Galveston, etc., R. Co., vs. Pfeuffer*, 56 Tex., 66. A railway company verbally agreed with a land owner in consideration of a grant of right of way over his premises to construct ditches to carry off water. The road was constructed and operated for a series of years. Ditches also were dug. Seventeen years afterwards the owner sued for damages from construction of road over his land and also damages to adjoining land, crops, etc., from overflow. It was held that the doctrine of dedication or of estoppel *in pais* applied to the right of way for a railroad, railroads being public highways. *Texas and New Orleans Ry. Co. vs. Sutor*, 56 Tex., 496. In a suit for damages against a railway company for taking land for their road-bed, the pleadings should identify the land taken by metes and bonds, and a judgment for the plaintiff should, after awarding his damages, vest possession of the land in the company. Such an action is maintainable only by the person who owned or possessed the property at the time damages were inflicted. *Central R. Co. vs. Merkel*, 32 Tex., 723. See, also, *Galveston, etc. R. Co., vs. Pfeuffer*, 56 Tex., 66.

agree with and pay the owner thereof all damages that may be caused to the lands and property of said owner by the condemnation of said real estate and property, and by the construction of such road. (P. D., 4922.)

ART. 4182. Continued—Mode of Condemnation.—If such company and said owner cannot agree upon the damages, it shall be the duty of said company to state in writing the real estate and property sought to be condemned, the object for which the same is sought to be condemned, the name of the owner thereof and his residence, if known, and file the same with the county judge of the county in which such property is situated. (P. D., 4922.)

ART. 4183. Continued—Board of Three Freeholders to assess Damages.—Upon the filing of such statement the county judge shall forthwith, either in term time or in vacation, appoint three disinterested freeholders of said county as special commissioners to assess said damages, giving preference to those that may be agreed on between said corporation and said owner. (Ib.) (a)

ART. 4184. Continued—Freeholders to be Sworn.—The said commissioners shall be sworn by the county judge, or by any officer authorized by law to administer oaths, to assess said damages fairly and impartially and in accordance with law. (Ib.)

ART. 4185. Continued—Board to appoint a Day and Place of Hearing.—Said commissioner shall, without delay, appoint a day and place for hearing said parties, and the day appointed shall be the earliest practicable day, and the place selected for such hearing shall be as near as practicable to the property in controversy, or at the county seat of the county in which the property is situated. (Ib.)

ART. 4186. Continued—Notice of Hearing to Parties.—The commissioners shall issue a notice in writing to each of the parties, notifying them of the time and place selected for the hearing. (Ib.)

ART. 4187. Continued—Service of Notice of Hearing.—Said notice shall be served upon said parties at least five days before the day of hearing, exclusive of the day of service, and shall be served by delivering a copy of the same to the party, his agent or attorney, and may be served by any person competent to testify.

ART. 4188. Continued—Return of Notice of Hearing.—

(a) The charter of the Houston Tap and Brazoria Railway Company, passed in 1856, provided for the appointment, by the district court, of appraisers to determine the compensation due to owners of land taken by the company for its road, such appraisement to be reported to the court, and if confirmed, to be made a judgment thereof. This provision is not in conflict with the constitutional guarantee of trial by jury, or other constitutional provisions. *Houston, etc. R. Co. vs. Melburn*, 34 Tex., 224, citing with approval *Railway Co. vs. Ferris*, 26 Tex., 588.

The person making such service shall return the original notice to said commissioners, or any one of them, on or before the day set for the hearing, with his return in writing thereon stating how and when the same was served.

ART. 4189. Continued—Notice of Hearing served on Guardian, Executor, etc.—When the property in controversy is the property of the estate of a deceased person or of a minor, and such estate has a legal representative or such minor has a guardian, the notice shall be served upon such legal representative or guardian. (Ib.)

ART. 4190. Continued—Service of Notice of Hearing by Publication.—When the property in controversy belongs to a non-resident of this State, or to an unknown person, or to a person whose residence is unknown, such notice may be served upon such owner by publication in the same manner as is provided for service of citation by publication in civil suits. (P. D., 4922.)

ART. 4191. Continued—Proceedings of the Board.—When service of notice has been perfected, the commissioners shall, at the time and place appointed, or at any other time and place to which said hearing has been adjourned, proceed to fully hear said parties; but if upon the day set for the hearing the service of notice has not been perfected, the said hearing shall be postponed from time to time until such service has been perfected.

ART. 4192. Continued—Powers of the Board.—Said commissioners for the purpose mentioned in this chapter shall have power to compel the attendance of witnesses and the production of testimony, and to administer oaths, and punish for contempt as fully as is provided by law for the district or county court.

ART. 4193. Continued—Rule of Damages.—Said commissioners shall hear evidence as to the value of the property sought to be condemned, and as to the damages which will be sustained by the owner thereof by reason of such condemnation, and as to the benefits that will result to the remainder of such property belonging to such owner, if any, by the construction and operation of such railroad, and shall according to this rule assess the actual damage that will accrue to such owner by said condemnation.

ART. 4194. Continued.—The Same.—When the whole of a person's real estate is condemned, the damages to which he shall be entitled shall be the market value thereof in the market in which the same is located.

ART. 4195. Continued.—The Same.—When only a portion of

a person's real estate is condemned, the commissioners shall estimate the injuries sustained and the benefits received thereby by the owner as to the remaining portion of such real estate; whether such remaining portion is increased or diminished in value by such condemnation, and the extent of such increase or diminution, and shall assess the damages accordingly.

ART. 4196. Continued.—The Same.—In estimating either the injuries or the benefits, as provided in the preceding article, those injuries or benefits which the owner of such real estate sustains or receives in common with the community generally, and which are not peculiar to him and connected with his ownership, use and enjoyment of the particular parcel of land, shall be altogether excluded from such estimate.

ART. 4197. Continued.—Finding of the Board filed with County Judge.—When said commissioners shall have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due to the owner of such real estate, if any be found to be due, and shall date the same and sign it, and shall file said assessment, together with all other papers connected with the case, with the county judge without delay.

ART. 4198. Continued—Vacancies upon the Board, how filled.—Should the said commissioners, or either of them, from any cause be unable or fail to act as such, the county judge may at any time appoint another commissioner or commissioners to supply the place or places of those who are unable or who fail to act.

ART. 4199. Continued—Pay of Commissioners.—Commissioners appointed under this chapter shall be entitled to receive for services three dollars each for every day they may be engaged in the performance of their duties as such commissioners, and they may withhold their decision until their said fees are paid to them.

ART. 4200. Continued—Costs of Notice, how paid.—The railroad company seeking to condemn property shall defray all expenses of serving notice upon the owner of such property, but shall be entitled to recover said expenses from such owner in case it shall be decided that said owner shall pay the costs of the proceeding.

ART. 4201. Continued—Costs of Proceedings adjudged against either Party.—The commissioners may adjudge the costs against either party, and shall make out a statement in writing of all the costs which may have accrued before them, and shall state therein against which party the said costs have been adjudged, and shall sign the same and deliver it, with the other papers of the cause, to the county judge.

ART. 4202. Continued—Objections to Answer heard by County Judge.—If either party be dissatisfied with the decision of such commissioners he may, within ten days after the same has been filed with the county judge, file his opposition thereto in writing, setting forth the particular cause or causes of his objection, and thereupon the adverse party shall be cited, and said cause shall be tried and determined as in other civil causes in said court. (P. D., 4922.)

ART. 4203. Continued—Award Final if Objections not filed in Ten Days.—If no objections are filed to such decision within the time prescribed in the preceding article, the county judge shall cause the said decision to be recorded in the minutes of his court, and shall make the same the judgment of said court, and may issue the necessary process to enforce the same.

ART. 4204. Continued—Costs of Proceedings of Board, how ascertained.—The costs of the proceedings before the commissioners and in the court shall be determined as follows, to wit: If the said commissioners shall award greater damages than the said company offered to pay before the proceedings commenced, or if objections are filed to the decision in the county court under the provisions of this chapter, and the judgment of the court is for a greater sum than the amount awarded by the commissioners, then the said company shall pay all costs; but if the amount awarded by said commissioners as damages, or if the judgment of the county court shall be for the same or less amount of damages than the amount offered by the company before proceedings was commenced, then the costs shall be paid by the owner of the property. (Ib.)

ART. 4205. Continued—Damages to be paid before taking condemned Property.—In no case shall such corporation be entitled to enter upon and take the property condemned without first having paid whatever amount of damages and costs may have been awarded or adjudged against it. (Const., art. 1, § 17.)

ART. 4206. Right of Way an Easement only—Not lost by Forfeiture of Charter.—The right of way secured or to be secured to any railroad company in this State, in the manner provided by law, shall not be so construed as to include the fee simple estate in lands, either public or private, nor shall the same be lost by the forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation. (Act, Feb. 7, 1861, p. 12.)

ART. 4207. Right of way reserved out of Lands granted to Railroad Companies.—The right of way is hereby reserved to any railroad companies incorporated by the laws of this State, or that

may hereafter be so incorporated, to the extent of one hundred feet on each side of said road, or roads that cross over, or extend through any lands granted, or that may be hereafter granted to any railroad company by the Legislature, with the right to take from the lands so granted such stone, timber and earth as such road may need in the construction of its line of road. (P. D., 7389a.)

ART. 4208. Judgment of the Court vests Right of Way. Whenever the right of way has been acquired as hereinbefore provided, the judgment of the court shall vest such right in the company so acquiring the same.

CHAPTER 9.

OF OTHER RIGHTS AND POWERS OF RAILROAD CORPORATIONS.

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4210. To have a seal.	4219. To borrow money and issue bonds secured by mortgage.
4211. To purchase and hold real estate, etc.	4220. Continued—Mortgage to be authorized by stockholders, how.
4212. To take grants of land, etc., in aid of construction.	4221. Continued—Resolution of stockholders to be filed with Secretary of State.
4213. Lands to be alienated, when.	4222. Bonds may be exchanged for stock.
4214. Continued—Exception.	
4215. To carry persons and property.	
4216. To erect only necessary buildings, etc.	
4217. To regulate time and rate of transportation, subject, etc.	

ART. 4209. To have Succession—Sue and be sued.—All railroad corporations shall have succession, and in their corporate name may sue and be sued, plead and be impleaded. (Act, Aug. 15, 1876, p. 142, § 4.)

ART. 4210. To have a Seal.—Any corporation may have and use a seal, which it may alter at pleasure. (Ib.) (a)

ART. 4211. To purchase and hold Real Estate.—Any railroad company shall have the right to purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway and the stations and other accommodations necessary to accomplish the objects of its incorporation, and to convey the same when no longer required for the use of such railway. (Ib., p. 143, §§ 6, 23.)

ART. 4212. To take Grants of Land, etc., in Aid of Construction.—Such corporation shall have the right to take, hold and

(a) Distinction between use of seal by trading and by municipal corporations. Relaxation in the rule as to the former does not apply to the latter. San Antonio vs. Gould, 34 Tex., 50.

use such voluntary grants of real estate and other property as shall be made to it in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, in any manner not incompatible with the terms of the original grant. (Ib.)

(a)

ART. 4213. Lands to be alienated, when.—All lands purchased by or donated to a railroad corporation, except such as are used for depot purposes, reservations for the establishment of machine shops, turn-outs and switches, shall be alienated and disposed of by said company in the same manner and time as is required where lands have been received from the State. (Ib.) (b)

See
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ART. 4214. Continued—Exception.—The three preceding articles shall apply to such corporations as are prohibited by their acts of incorporation from purchasing or receiving donations of land, as well as to those corporations that are not so prohibited. (Ib. p. 143, § 6.)

ART. 4215. To Carry Persons and Property.—Such corpo-

(a) If the construction of a road within some certain and reasonable time was the essential inducement to the making of a contract to donate lands to the company, or to subscribe to the stock therein—if that was the real intention of the contract, and that was the obligation which it imposed on the company—the extension of time for building the road by the Legislature could not have the effect to discharge the company from that obligation. *Henderson vs. The Railroad Co.*, 17 Tex., 500. The cost of the construction of a road and the time within which it will be completed to a given point are not matters about which every one is presumed to be equally capable of judging, in such sense as would relieve the contract of the company from the ordinary effects of misrepresentations as to those particulars where they were the essential inducements to the contract, Ib. A promise to pay a railroad company a sum of money when it shall have constructed its road, between certain points named, and kept the same in operation for the period of one year, conveying passengers and freight between said points, is for a valuable consideration and binding. *Rose vs. San Antonio, etc.*, R. Co., 31 Tex., 49. A deed conveying right of way to a railroad company, and accepted by it, which recites that it is made in consideration of one dollar in hand paid by the company, and the “further consideration that the said company will locate its railroad on my lands in Marion county,” is not only a receipt for purchase money paid, but a contract between the parties that the grantor had conveyed the right of way, and the company would construct its road over the same. *East Line, etc.*, R. Co., vs. *Garrett*, 52 Tex., 133. See in connection with this case, *Galveston, etc.*, vs. *Pfeuffer*, 56 Tex., 66. Measure of damages for breach of contract granting right of way to company, on condition that adjoining land be protected from overflow. *Sabine, etc.*, R. Co., vs. *Joachim*, 58 Tex., 456. Parties who, by deed, convey the right of way to a railroad, are conclusively presumed to have assented to bear all loss and take all profit which may incidentally result from the location and construction of the road in proper manner over that roadway. *Houston, etc.*, R. Co., vs. *Adams*, 58 Tex., 476.

(b) The agent of a railway company acting under a general power to procure a right of way for the road, has not, as incidental to his authority, the right to locate depots along the line. His agreement to locate a depot at a particular point as the consideration of a deed to the company of a certain right of way, will not be binding on the company. If the location of the depot upon or near the land of the grantor is not mentioned in the deed as a part of the consideration, parol evidence will not be admitted in a suit against the company that such location of the depot was in fact a part of the consideration for the deed. *Houston, etc.*, R. Co., vs. *McKinney*, 55 Tex., 176; *Galveston, etc.*, R. Co., vs. *Pfeuffer* 56 Tex., 66.

rations shall have the right to receive and convey persons and property on its railway by the power and force of steam or by any mechanical power. (Ib., p. 147, § 23.) (a)

ART. 4216. To Erect only Necessary Buildings, etc.—Such corporation shall have the right to erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for the accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of its railway; but no railway company shall have the power, either by its own employes or other persons, to construct any buildings along the line of their railroad to be occupied by their employes or others, except at their respective depot stations and section houses, and at such places only such buildings as may be necessary for the transaction of their legitimate business operations, and for shelter for their employes, nor shall they use, occupy or cultivate any part of the right of way over which their respective roads may pass, with the exception aforesaid, for any other purpose than the construction and keeping in repair their respective railways. (Ib.)

ART. 4217. To Regulate Time and Rate of Transportation, Subject, etc.—Such corporation shall have the right to regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject, nevertheless, to the provisions of this or any other law that may hereafter be enacted. (Ib.) (b)

(a) The greatest degree of care and prudence is required of railway companies as carriers of passengers. What will constitute contributory negligence on the part of a passenger. *Houston, etc., R. Co., vs. Gorbett*, 49 Tex., 573. Petition need not negative the existence of contributory negligence, unless the facts unexplained *prima facie* establish a case of negligence on the part of the plaintiff. *Texas and Pacific Ry. Co. vs. Murphy*, 46 Tex., 356. Measure of damages for unlawful expulsion of a passenger. *Hays vs. Houston, etc., R. Co.*, 46 Tex., 272; exemplary damages in such a case, *Ib.*; a verdict of \$2,500 actual damages sustained. *Texas and Pacific R. Co., vs. Casey*, 52 Tex., 112. No special damage from inconvenience, disappointment or loss of time being proven, a verdict of \$750 for the expulsion of a passenger was held to be excessive. *Houston, etc., R. Co., vs. Ford*, 53 Tex., 364. The suffering or permanent injury caused by erysipelas, resulting proximately from personal injuries caused by the negligence of a railway company, constitutes an element in estimating damages. This rule is not affected by the fact that such a disease would not ordinarily result from the injury suffered. *Houston, etc., R. Co., vs. Leslie*, 57 Tex., 83. Facts held sufficient to sustain a verdict of \$1,500 damages against a railway company for injury to a passenger, producing a more aggravated condition of hernia than had before existed. *Houston, etc., R. Co. vs. Shafer*, 54 Tex., 641. In the case of a passenger injured through the negligence of a carrier, whereby a miscarriage is produced, the latter is liable for all immediate results of such injury. *Sawyer vs. Dulany*, 30 Tex., 479. Elements of damage in case of injury to passenger. A verdict of five thousand dollars for actual damages for personal injuries, upheld. *Houston etc., R. Co., vs. Boehm*, 57 Tex., 152. The amount of damages is peculiarly for the jury, and unless, in view of the evidence, the damages are so excessive and disproportioned to the injury alleged as to indicate that the verdict was the result of passion, prejudice or partiality, the judgment will not, on appeal, be set aside. *International, etc., R. Co., vs. Stewart*, 57 Tex., 166.

(b) A railroad company, although a common carrier, has the right to make reasonable regu-

ART. 4218. Continued.—In all cases where any such corporation, to induce aid in its construction, either by donation or subscription to its capital stock, shall desire to fix the rates for any period of time for the transportation of passengers or property, such corporation may adopt a resolution fixing such rates and the time during which the same shall continue, and have such resolution recorded in the office of the recorder of deeds in the several counties through which said road runs or is proposed to be run, and during the time for which said rates are so fixed, the same shall in no case be amended by said corporation or its successors: *Provided*, that said rates shall not exceed the rates allowed by law. (Ib., 149, § 30.)

ART. 4219. To borrow Money and issue Bonds secured by Mortgage.—Such corporation shall have the right from time to time to borrow such sums of money as may be necessary for constructing, completing, improving or operating its railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes aforesaid. (Ib., p. 147, § 23.) (a)

ART. 4220. Continued—Mortgage to be Authorized by Stockholders, how.—No mortgage by such corporation shall be

lations for conducting its business. Houston, etc., R. Co. vs. Moore, 49 Tex., 31. A regulation excluding passengers from freight trains is reasonable. Habitual disregard of this regulation will vitiate it. Burden of proof in such cases, Ib. Death from riding upon freight train contrary to regulations of the company confers no right of action. Houston, etc., R. Co., vs. Moore, 49 Tex., 31. It is a reasonable regulation that passengers shall not stop off a train and complete their trip without obtaining "stop over checks." Texas and Pacific R. Co., vs. Breen, 50 Tex., 43. The individual check of a conductor is not the equivalent of a "stop over check," Ib. Where the ticket on being presented was detached from the stub, and had printed on it, the words, "not good if detached," the conductor acted properly in rejecting it. Houston, etc., R. Co., vs. Ford, 53 Tex., 364. By his ticket the passenger acquires the right only to be carried according to the custom of the road. He has the right to be transported to the place which his ticket calls for on any train that usually carries passengers to that place, but he cannot insist on being carried out of the customary course of the road. Beauchamp vs. International R. Co., 56 Tex., 239. The right to eject a passenger at a regular stopping place for failure to pay fare or produce a good ticket cannot be questioned. Breen vs. Texas and Pacific R. Co., 50 Tex., 43. The words "any usual stopping place," as used in art. 4892 of Paschal's Digest, defined, "A place at which a train is stopped for wood or water only, is not "a usual stopping place." Texas and Pacific R. Co. vs. Casey, 52 Tex., 112. A passenger voluntarily leaving his seat in the passenger coach to continue his ride in the baggage car, who receives an injury in the wreck of the train which he would have avoided had he remained in the passenger coach, is guilty of contributory negligence, and cannot recover damages on account of such injury. Houston, etc., R. Co. vs. Clemmons, 55 Tex., 88. Authority of to make arrests. Liability of company for wrongful arrest of a passenger. Galveston, etc., R. Co., vs. Donahoe, 56 Tex., 162.

(a) The Constitution of 1866 did not prevent the franchise of a railway company from being mortgaged and sold under a degree of foreclosure or by a trustee empowered to sell. Houston, etc., R. Co., vs. Shirley, 54 Tex., 125. It is proper that the sheriff be named by the decree as authorized to enforce it by making sale of road, road-bed and franchise of a company against which a decree of foreclosure is rendered. Waco Tap R. Co. vs. Shirley, 45 Tex., 355.

valid unless authorized by a resolution adopted by a vote of two-thirds of all the stock of such company, after notice and in a manner provided in this title for increasing the capital stock of such corporations. (Ib.)

ART. 4221. Continued—Resolution of Stockholders to be filed with Secretary of State.—When any such resolution has been adopted in the manner provided by the preceding article, it shall be recorded in the office of the Secretary of State, and no such resolution shall take effect until so recorded. (Ib.)

ART. 4222. Bonds may be exchanged for Stock.—The directors shall be empowered, in pursuance of any such resolution, to confer on any holder of any bond, for money so borrowed as aforesaid, the right to convert the principal of such bond into the stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulations as may be provided in the by-laws of such corporation. (Ib.)

CHAPTER 10.

OF RESTRICTIONS UPON, DUTIES AND LIABILITIES OF RAILROAD CORPORATIONS

ARTICLE

4223. Road shall pass through county seat, when.
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 4242. Continued.

ARTICLE

4243. Continued—Owner of adjoining land may construct, when.
 4244. Continued—Damages for failure to construct.
 4245. Killing stock—Road to be fenced.
 4246. Competing lines not to be consolidated, leased or purchased—No officers in common.
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 4255. Continued—State engineer to compel regular connections—Powers in case of refusal.
 4256. Maximum rate of passenger fare.
 4257. Maximum rate of freight—Discrimination.
 4258. Penalty for violation of two preceding articles.

ART. 4223. Road shall pass through County Seat, when.
 No railroad hereafter constructed in this State shall pass within a dis-

tance of three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains: *Provided*, Such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes. (Const., art. 10, § 9.) (a)

ART. 4224. Surveys of Twenty-Five Miles—Location of Depots.—Every railroad company organized under this title shall make an actual survey of its route or line for a distance of twenty-five miles on its projected route, and shall designate the depot grounds along said first twenty-five miles before the road-bed is begun, and no railway company shall change its route or depot grounds after the same have been so designated. (Act, Aug. 15, 1876, p. 142, § 5.)

ART. 4225. Continued.—Every railroad company organized under this title shall, on the completion of the first twenty-five miles of its road-bed, make a survey of the next twenty-five miles, and of each subsequent twenty-five miles as the preceding twenty-five miles shall be completed, and every subsequent twenty-five miles shall be controlled by the provisions applicable to the first twenty-five miles of the road. (Ib.)

ART. 4226. Time Tables—Regular Trains—Duty to receive and transport Passengers.—Every such corporation shall start and run their cars for the transportation of passengers and property at regular times, to be fixed by public notice, (b) and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting, and the junction of other railroads, and at sidings and stopping places established for receiving and discharging way passengers and freights, (c)

(a) A railway company obligated itself to locate its depot at the nearest practicable point within one mile of a certain court-house. The word *practicable* as used in this contract was held to be not synonymous with *possible*. The company was bound only to locate its depot at the nearest point within one mile of the court-house, at which it could be done at a reasonable and ordinary cost, with reference to all the circumstances under which the location was to be made, and in view of the objects and purposes inducing the contract. *Wooters vs. International, etc., R. Co.*, 54 Tex., 294.

(b) The time table of a railway company, which announces on its face that it is for the government and information of employes only, and in terms reserves to the company the right to vary therefrom at pleasure, is not admissible in evidence in a suit for damages against the company for not stopping the train at a place mentioned in the time table, but at which no station was ever really established. *Beauchamp vs. International R. Co.*, 56 Tex., 239.

(c) Duty of railway companies to provide reasonable accommodation at their stations for passengers, and to keep platforms and surroundings of stations in safe condition. *Stewart vs. International, etc., R. Co.*, 53 Tex., 289. A petition held sufficient which alleged that the company neglected to provide "proper lights and accommodations for passengers at its freight depot," *Ib.*

and shall take, transport and discharge such passengers and property at, from and to such places on the due payment of the tolls, freight or fare legally authorized therefor. (P. D., 4893.) (a)

ART. 4227. Damages for Refusal to transport.—In case of refusal by such corporation, or their agents, so to take and transport any passenger or property, or to deliver the same, or either of them, at the regular or appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit. (P. D., 4894.)

ART. 4228. Employers' Badge.—Every conductor, baggage master, engineer, brakeman or other servant of any such railroad corporation, employed in a passenger train or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office, and the initial letters of the style of the corporation by which he is employed. (P. D., 4891.)

ART. 4229. Continued—No Right to act without.—No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll, ticket, or exercise any of the powers of his office, and no other of the said officers or servants, without such badge, shall have any authority to meddle or interfere with the passengers, their baggage or property. (Ib.)

ART. 4230. Baggage to be checked—Penalty for Refusal. A check shall be affixed to every package or parcel of baggage when taken for transportation by the agent or servant of such corporation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in an action of debt; and, further, no fare or toll shall be collected or received from such passenger; and if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train. (P. D., 4895.)

ART. 4231. Railroad Crossings—Signs—Penalty for Refusal to erect.—Such corporations shall erect at all points where its road shall cross any first or second class public road, at a sufficient

(a) Chapter 95, acts 1879, provides as follows: "Any railroad or railway company in this State, whose line of road does now or may hereafter terminate at the boundary line of this State, shall stop its trains at least thirty minutes at said line, or at their depot established thereat: *Provided*, Said company have a depot within three hundred yards of said line." And a fine of not less than fifty nor more than two hundred dollars is prescribed for any violations of the law by conductors, engineers or agents in charge of trains. Breach of a statutory duty in the operation of trains amounts to negligence *per se*. *Texas and Pacific Ry. Co. vs. Murphy*, 46 Tex., 356. Failure of the company to stop its train five minutes at the station as required by law. (*Paschal's Dig. art. 6532*), will not justify a passenger in attempting to get on or off the cars while in motion. *Galveston, etc., R. Co., vs. LeGierse*, 51 Tex., 189; *Houston, etc., R. Co., vs. Leslie*, 57 Tex., 33.

elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such sign shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal. (P. D., 4890.)

ART. 4232. Railroad Crossings—Bell to be rung—Penalty.—A bell of at least thirty pounds weight, or a steam-whistle, shall be placed on each locomotive engine, and the whistle shall be blown, or the bell rung, at the distance of at least eighty rods from the place where the railroad shall cross any public road or street, and that such bell shall be kept ringing until it shall have crossed such public road or stopped, and each locomotive engine approaching a place where two lines of railway cross each other, shall, before reaching such railroad crossing, be brought to a full stop; and any engineer having charge of such engine, and neglecting to comply with any of the provisions of this act, shall be fined in any sum not less than five nor more than one hundred dollars for such neglect, and the corporation operating such railroad shall be liable for all damages which shall be sustained by any person by reason of any such neglect. (P. D., 4897, as amended by Laws 1883, Regular Session, p. 28.) (a)

(a) The failure of the servants of the company to ring the bell or blow the whistle, as required by law, does not of itself render the company liable for damages to a person injured at the highway crossing. The true rule is that the failure to ring the bell or blow the whistle is negligence, and if by reason thereof, the deceased was not aware of the approach of the train, and this negligence was the proximate cause of the injury, then the defendant is liable. *Houston, etc., R. Co. vs. Nixon*, 52 Tex., 19. The court was asked to instruct the jury that the failure of one about to cross a railroad track to look each way for an approaching engine, is negligence; also, if the train was running at such a rate of speed as would have enabled deceased to have seen and avoided it, then his unsuccessful attempt to do so in front of it was negligence. It was held that these charges took the question of contributory negligence from the jury, and were rightfully refused. *Houston, etc., R. Co. vs. Waller*, 56 Tex., 331; *Texas & Pacific R. Co. vs. Chapman*, 57 Tex., 75. The sobriety or intoxication of a pedestrian injured at a highway crossing is a proper subject for the consideration of a jury in determining whether he exercised due care or not. *Houston, etc., R. Co. vs. Waller*, 56 Tex., 331. The law presumes that a person walking upon a railroad track will leave the same in time to prevent injury from an approaching train, of which he has knowledge or should have, by the use of the senses of hearing or seeing, and the managers of the train may act on this presumption. *Houston, etc., R. Co. vs. Smith*, 52 Tex., 178. One lying drunk on a railroad track who is run over and injured by a train is guilty of contributory negligence, which constitutes a bar to his action for damages, unless his injuries were wantonly or willfully inflicted. Duty of railway company to guard against injuring a trespasser on its track, who, from a providential cause has become insensible while there and is lying in open view. The doctrine that a railway company owes no duty to one unlawfully on its track, and is not liable in damages for injury to such a one unless wantonly inflicted, discussed and disapproved. *Houston, etc., R. Co. vs. Sympkins*, 54 Tex., 615. Liability for injury to a child trespassing upon the track, and the question of imputed negligence, examined. *Texas & Pacific Ry. Co. vs. O'Donnell*, 58 Tex., 27.

ART. 4233. Making up mixed Train—Passenger Coach in the Rear—Penalty.—In forming a passenger train, baggage or freight or merchandise or lumber cars shall not be placed in rear of passenger cars; and if they or any of them, shall be so placed, and any accident happen to life or limb, the officer or agent who so directed, or knowingly suffered such arrangement, and the conductor and engineer of the train, shall each and all be held guilty of intentionally causing the injury, and be punished accordingly. (P. D., 4896.)

ART. 4234. Brakes—Brakeman at End of Train.—Every such company shall have a good and sufficient brake upon the hindmost car on all trains transporting passengers and merchandise, and also permanently stationed there a trusty and faithful brakeman, under a penalty of not exceeding one hundred dollars for each offense, to be recovered by suit in the name of the State. (P. D., 4907.)

ART. 4235. Must Carry U. S. Mail—Compensation, how fixed.—Every such corporation shall, when applied to by the Postmaster-General, convey the mail of the United States on its road or roads; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate or speed, manner and condition of conveying the same, it shall be lawful for the Governor to appoint three commissioners, who, or a majority of them, after fifteen days' notice, in writing, of the time and place of meeting, to the corporation, shall determine and fix the prices, terms and condition aforesaid; but such price shall not be less for conveying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car; and in case the Postmaster-General shall require the mail to be carried at other hours, or at a higher speed than the passenger train be run at, the corporation shall furnish an extra train for the mail and be allowed an extra compensation for the expenses and wear and tear thereof and for the services, to be fixed as aforesaid. (P. D., 4903.)

ART. 4236. Suitable Depot Buildings to be erected—Damages for Failure.—Each and every railroad company is hereby required to erect at each and every depot, station or place established by such company for the reception and delivery of freight, suitable buildings or inclosures to protect produce, goods, wares and merchandise and freight of every description from damage by exposure to the weather, stock or otherwise, in default of which such railroad company shall be liable to the owner of such produce, goods, wares or merchandise for the amount of damages or loss sustained by reason of such im-

proper exposure, together with all costs and expenses of recovering the same, including necessary attorney's fees (P. D., 4923.)

ART. 4237. Fees for Storage, when allowed.—Railroad companies shall in no case be allowed to charge storage upon freight received by them for delivery, unless the owner or consignee thereof neglect to remove it from the depot of the company within three days after notice of its reception, which notice may be given by posting the same on the depot door, and after the expiration of such time the company may remove and store said freight at the expense of the owner or consignee, and said freight shall be held liable for the freight and charges due thereon. (P. D., 4923.)

ART. 4238. Depots of Connecting Lines—Duty to receive and deliver Freight, etc.—The point at which the roads of two companies intersect or connects, is declared to be a depot for the receipt and delivery of freight, and the companies must receive, carry and deliver freight and passengers to and from the same, under the same regulations and the same penalties as in other cases. (P. D., 4933.)

ART. 4239. Switch Cars to be furnished—Penalty.—When a company constructs a switch on its road for the accommodation of freighters, they shall be bound to furnish a sufficient number of cars for the transportation of freight therefrom when requested so to do, and in default shall be subject to the same penalties as in other cases of neglect of the like character. (P. D., 4934.)

ART. 4240. Cattle Guards.—Each and every railroad company whose railway passes through a field or inclosure, is hereby required to place a good and sufficient cattle-guard or stop at the points of entering such field or inclosure, and keep them in good repair. (P. D., 4925.) (a)

ART. 4241. Continued.—In case an inclosure or field through which a railway passes shall be enlarged or extended, or the owner of the land over which a railway runs, shall clear and open a field so as to embrace the track of a railway, such railroad company is hereby required to place good and sufficient cattle-guards or stops at the margins of such extended inclosures or fields, or such new fields, and keep the same in repair.

ART. 4242. Continued.—Such cattle-guards or stops shall in all cases be so constructed and kept in repair as to protect such fields and inclosures from the depredations of stock of every description.

(a) Duty and responsibility to construct cattle-guards, construct and maintain fences, etc., cannot be shifted to a contractor. The company will be liable for the contractor's neglect of duty in such a case. *Houston, etc., R. Co. vs. Meador*, 50 Tex., 77.

ART. 4243. Continued—Owner of adjoining Land may construct, when. Should any such company fail to construct and keep in repair such cattle-guards and stops, the owner of such inclosure or field may have such cattle-guards and stops placed at the proper places and kept in repair, and may recover the costs thereof from such railroad company, unless it be shown that the enlargement or extension, as above provided, was made capriciously and with intent to annoy and molest such company. (P. D., 4925.)

ART. 4244. Continued—Damages for Failure to construct.—Should any such company neglect to construct the proper cattle-guards and stops and keep the same in repair, as required by law, such company shall be liable to the party injured by such neglect, for all damages that may result from such neglect, to be recovered by suit in any court having jurisdiction. (Ib.)

ART. 4245. Killing Stock—Road to be fenced.—Each and every railroad company shall be liable to the owner for the value of all stock killed or injured by the locomotives and cars of such railroad company in running over their respective railways, which may be recovered by suit before any court having competent jurisdiction of the amount. If the railroad company fence in their road, they shall only then be liable in cases of injury resulting from the want of ordinary care. (P. D., 4926.) (a)

ART. 4246. Competing Lines not to be Consolidated.—No railroad corporation, or the lessees, purchasers or managers thereof, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning, or having under its control, a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having control of a competing or parallel line. (Const., art. 10, § 5.) (b)

ART. 4247. Continued.—No railroad company organized under the laws of this State shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other State or of the United States. (Ib., § 6.)

(a) A railroad company is liable for damages resulting from injury or killing of stock by its train on the railway track, when the train is moving at a greater rate of speed than is allowed by law. *Houston, etc., R. Co., vs. Terry*, 42 Tex., 451. Burden of proof in this class of cases. *Bethje vs. Houston, etc., R. Co.*, 26 Tex., 604. The owner may assign the right to sue the company for the damage sustained. This tort is one not to the person but to the estate. *Galveston, etc., R. Co., vs. Freeman*, 57 Tex., 156. A railway company is not liable under the statute for interest on the value of stock or cattle killed by its locomotives or cars. The measure of damages under the statute is the value of the stock at the time of the injury or killing. *Houston, etc., R. Co., vs. Muldrow*, 54 Tex., 233.

(b) See note to the constitutional provision, *ante* p 8.

ART. 4248. Profile of Road to be filed in General Land and County Offices.—Every such corporation shall, within a reasonable time after their road shall be located, cause to be made—

1. A map and profile thereof and of the land taken or obtained for the use thereof, and file the same in the General Land Office, and also like maps of the parts thereof located in different counties; and file the same in the offices of the county clerk and district surveyor of the county in which such parts of said roads shall be, there to remain as a record forever. Every such map shall be drawn on a scale and on paper to be designated by the Commissioner of the General Land Office, and certified and signed by the president of the corporation.

2. A certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves, certified and signed and filed as aforesaid. (P. D., 4904.)

ART. 4249. Annual Report—Contents of.—Every such corporation shall make an annual report to the Comptroller of Public Accounts of the operations of the year, ending on the first day of October, which report shall be verified by the oaths of the treasurer and acting superintendent of operations, and filed in his office by the twentieth of October in each year, and shall state—

1. The capital stock and the amount actually paid in.

2. The amount expended for the purchase of land, for the construction of the road, for buildings and for engines and cars, respectively.

3. The amount and nature of its indebtedness, and the amount due the corporation. (a)

4. The amount received for the transportation of passengers, of property, of the mail, and from all other sources.

5. The amount of freight, specifying the quantity in tons, of the product of the forest, of animals, of vegetable food, other agricultural products, manufactures, merchandise and other articles.

6. The amount paid out for repairs, engines, cars, buildings and salaries, respectively.

7. The number and amount of dividends and when made.

8. The number of engine-houses and shops, of engines and cars, and their character.

(a) A railway company, in an action against it by a stockholder for a wrongful conversion of his interest, is not precluded by the erroneous estimates of its officials, embodied in a published report, from showing the true value of its assets. *International, etc., R. Co., vs. Bremond*, 53 Tex., 96.

9. The number of miles run by passenger, freight and other trains, respectively.

10. The number of men employed and their occupations.

11. The number of persons injured in life or limb, and the cause of such injuries.

12. Whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation. (a)

(a) (1) *Master and Servant*. Whether a minor, be of sufficient age and discretion to justify his employment as a brakeman, is a question for the jury. If the minor has not sufficient discretion to comprehend and guard against the dangers of employment, when fully explained to him, the contract with him will not place him in the position of an employe, or preclude a recovery for injuries suffered through the negligence of other employes. *Hamilton vs. Galveston R. Co.*, 54 Tex. 556. Case of brakeman fifteen years of age. *Ib.* The master is not liable for injuries sustained by his servant through the negligence of a fellow servant. *Houston etc., R. Co vs. Miller*, 51 Tex., 270; *Robinson vs. Houston etc., R. Co.*, 46 Tex., 540. This rule held applicable in the case of an employe, a minor aged nineteen years. *Houston etc. R. Co. vs. Miller, supra*. If a railway company is not guilty of negligence in the selection of a locomotive engineer, it is not liable to his fellow servant (a brakeman) for injuries which are the result of a want of proper care on the part of the engineer. *Houston etc., R. Co. vs. Willie*, 53 Tex., 318. Liability of company for retention in service of an incompetent employe. *Houston etc. R. Co. vs. Meyers*, 55 Tex., 110; *the Texas M. R. Co. vs. Whitmore*, 58 Mo., 276. An employe, knowing the reckless character of a fellow servant, by continuing in service with such fellow servant and placing himself in a position to be injured by his carelessness, cannot recover damages for such injury. *Ib.* If the usage in a particular case imposes upon a railroad employe an extra hazardous duty, and in its performance he sustains an injury, the burden is on him to show that the existence of the established usage had been concealed from him by the company. *Watson vs. Houston etc. R. Co.*, 58 Tex., 434.

(2) *Defective Machinery, etc.* The test of diligence required of railroad companies towards employes in furnishing and maintaining proper cars, machinery, etc., is that of ordinary care—not that high test adopted for the safety of passengers, so far as human care and foresight can accomplish the result. *The Missouri Pacific R. Co. vs. Lyde*, 57 Tex., 505. Duty of company to furnish its employes with implements and machinery reasonably safe and strong. *Galveston etc., R. Co. vs. Delehunty*, 53 Tex., 206. Injury to section hand from working of handle to crank of hand car. *International, etc., R. Co. vs. Doyle*, 49 Tex., 190. Injury to employe from negligent construction of tank. *Houston, etc., R. Co. vs. Oram*, 49 Tex., 341. Employe knowingly using defective machinery, who is injured thereby, cannot recover damages of the company for such injury. Facts precluding a recovery by a brakeman injured in coupling cars while the fireman was acting as engineer. *Houston, etc., R. Co. vs. Meyers*, 55 Tex., 110. The duty of a train master to examine for defect, etc., in machinery does not, as matter of law, relieve the company employing him from responsibility for negligence in the use of defective machinery. *International, etc., R. Co. vs. Kindred*, 57 Tex., 491. See also, *The Texas M. R. Co. vs. Whitmore*, 58 Tex., 276.

(3) *Negligence*. In the absence of a law declaring an act to be negligence, it is a fact to be found by the jury. It is error to instruct the jury as to an act that it is negligence. *Houston etc., R. Co. vs. Miller*, 51 Tex., 271. Ordinary care defined. *Houston etc., R. Co. vs. Smith*, 52 Tex., 178. Injury to pedestrian on track, *Ib.* Contributory negligence discussed. *Houston etc., R. Co. vs. Smith*, 52 Tex., 178. *Houston etc. R. Co. vs. Nixon*, 52 Tex., 19. Injury to children at play upon track, *Ib.*; *Texas & Pacific R. Co. vs. O'Donnell*, 58 Tex., 27. Damages may be recovered for injuries to children who, through want of discretion, have contributed thereto, under circumstances which would defeat a recovery by persons of more mature age and discretion. See case of injury to a child seven years of age while playing on the turntable of a railway. *Evansich vs. Gulf etc. R. Co.*, 57 Tex., 126, s. c. 57 Tex., 123. Expert evidence is admissible on behalf of the company to show that the management of a switch, from which it is claimed damage resulted, is the mode adopted generally by prudent railroad men in switching

13. The sales of lands donated by the State and the quantity remaining unsold.

ART. 4250. Continued—Penalty for Neglect to make.—Any such corporation which shall neglect to make such report shall be liable to a penalty of one thousand dollars, to be sued for in the name of the State. (P. D., 4901.)

ART. 4251. Connecting Lines must receive Passengers, Freight and Cars of each other.—Compensation, how fixed.—Every such company shall, for a reasonable compensation, draw over their railroad, without delay, the passengers, merchandise and cars of every other railroad company which may enter and connect with their railroad; and if the respective companies cannot agree upon the compensation aforesaid, it shall be the duty of the president of each company to select one man as commissioner, and the two commissioners so selected (and in case of disagreement the State Engineer, or such person as the Governor may appoint, shall be the umpire), neither of whom shall be a stockholder in either road, nor shall at any time have been in the employment of either company, or in any way interested in either company, and they shall fix the rates at which said cars shall be drawn over said roads, which rates shall not be changed for one year from the time of going into effect. (Const., Art. 10, § 1; Act, Nov. 3, 1866, p. 84; P. D., 7352.)

ART. 4252. Continued—Cars to be hauled how often.—The said commissioners shall also fix the stated periods at which said cars shall drawn over said roads without delay as aforesaid, which shall not be less than three times a week, and oftener if the necessities of the company may require it, due regard being had to the conven-

cars under like circumstance. *Houston etc., R. Co. vs. Cowser*, 57 Tex., 293. In a suit for damages for personal injuries, it is not necessary that the petition should negative by its averments the existence of contributory negligence on the part of the person injured, unless it contain allegations which, unexplained, would establish a prima facie case of negligence by the injured party. *Houston etc., R. Co. vs. Cowser*, 57 Tex., 293. *Texas & Pacific R. Co. vs. Murphy*, 46 Tex., 356.

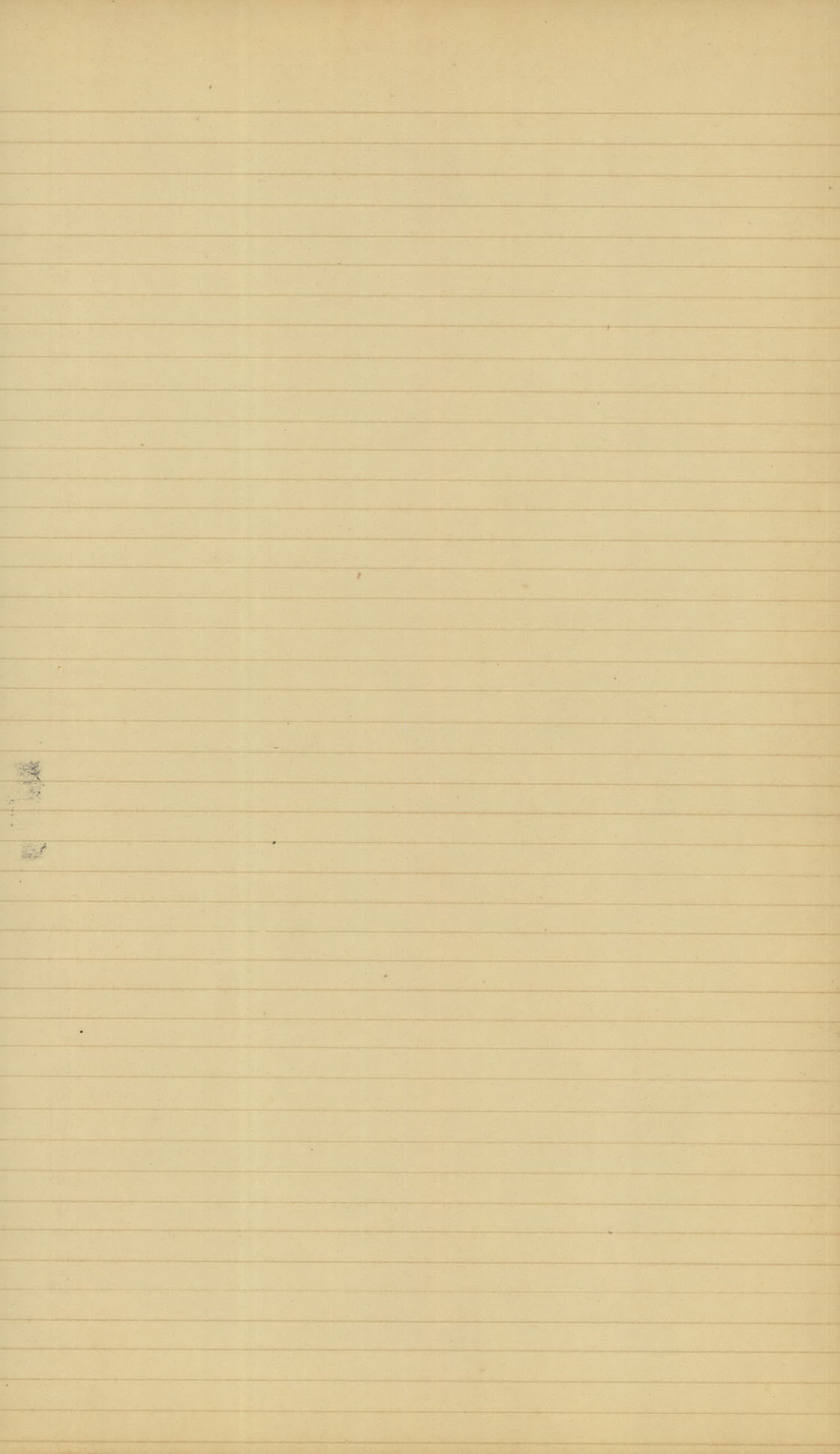
(4) *Damages*. Where the verdict is manifestly excessive, it is the duty of the court in which the case is tried, to set it aside and send the case to another jury; and, on it being made to appear, on appeal, that the court below erred in refusing to do so, the case will be reversed and remanded. See facts such as to warrant a court in sustaining a verdict of \$12,000 for personal injuries. *Houston etc., R. Co. vs. Randall*, 50 Tex., 254. In a suit for damages for personal injury against a railroad company, brought by the injured party, the wealth or poverty of the plaintiff is an immaterial issue, although he may show the nature of his business and the value of his services in conducting it as grounds for estimating damages. *The Missouri Pacific R. Co. vs. Lyde*, 57 Tex., 505. Measure of damages in action by parent for injury to minor child. *Evansich vs. Gulf etc., R. Co.*, 57 Tex., 123; in case of injury to an employe, a minor. *Houston etc., R. Co. vs. Miller*, 51 Tex., 270; in case of an employe (a brakeman) permanently disabled. *Houston etc., R. Co. vs. Willie*, 53 Tex., 318. Exemplary damages for injury to an employe. *Houston etc., R. Co. vs. Cowser*, 57 Tex., 293. Measure of damages in case of death, see arts. 2901, 2909 and notes, *ante* pp. 46, 48; in case of injury to passenger, see note to art. 4215, *ante*, p. 80.

ience and interest of each company and the public who shall be accommodated thereby. (P. D., 7353.)

ART. 4253. Continued—Penalty for Refusal to haul.—In case said companies or either of them should fail or refuse to make, or carry out when made, the necessary agreement or arrangement to draw the cars of each over their respective roads without delay as aforesaid, the president of said company so failing shall be individually responsible to the person or his agent who is deprived thereby of the privilege of shipping freight on the cars which should be drawn over said road, in the sum of five hundred dollars, which sum shall be recovered in any court of competent jurisdiction. (P. D., 7354.)

ART. 4254. Continued—Terms of hauling to be advertised—Penalty for Refusal to carry on.—When the agreement for drawing cars of companies over their respective roads as prescribed in this section, is effected, a synopsis of the terms of the same shall be posted up in the office of the respective companies, and shall be published by said companies as a standing advertisement in a newspaper published in the cities of Houston and Galveston, and said companies shall be required to receive and receipt for freight to be shipped over the roads of the companies with which they may connect, in cars to be drawn over said roads, as prescribed by the agreement aforesaid, which freight shall go through on said cars without breaking bulk and re-shipping the same at any depot where said roads connect; and should any railroad agent fail or refuse to receive and receipt for freights to be shipped over the road of his principal, or to be shipped by drawing cars over roads that connect with the road of his principal, in the manner prescribed in this chapter, said agent shall pay to the party, or his agent so refused, the sum of two hundred dollars, which sum shall be recovered before any court of competent jurisdiction. (P. D., 7355.)

ART. 4255. Continued—State Engineer to compel regular Connections—Powers in Case of Refusal.—The State Engineer, and in case there is no such officer, such person as the Governor shall appoint to act as such, shall have the right and power to compel all railroads that connect with each other in this State to make their connections regular and proper, so as to accommodate the public travel on said roads, and shall have the right and power to compel said companies to draw the passengers and freights of each other on their respective roads and cars, and in case said company should refuse to do so, then said Engineer, or such person as may be appointed by the Governor, shall take possession of said railroad and rolling stock in the name of the State, and report the same to the Governor thereof; said road so taken shall be used for the use and



benefit of the State until said company make satisfactory arrangements with the Governor to insure the State that they will carry out in good faith the objects of this title; but unavoidable circumstances, when proven, shall be a good defense to any recovery under this article. (P. D., 7356.)

ART. 4256. Maximum Rate of Passenger Fare.—No railroad company shall demand or receive for transporting a passenger over its line of road exceeding three cents for each mile, or fraction of a mile, it may transport such passenger, and any passenger shall be entitled to have transported with him baggage, not to exceed one hundred pounds, free of charge. (As amended by Laws, 1882, Called Session, ch. 4, p. 3.)

ART. 4257. Maximum Rate of Freight—Discrimination. Railroad companies may charge and receive not exceeding the rate of fifty cents per 100 pounds per 100 miles for the transportation of freight over their roads, but the charges for transportation on each class or kind of freight shall be uniform, and no unjust discrimination in the rates or charges for the transportation of any freight shall be made against any person or place on any railroad in this State; and it shall be *prima facie* evidence of an unjust discrimination for any railroad company to demand or receive from one person, firm or company a greater compensation than from another for the transportation in this State of any freight of the same kind or class, in equal or greater quantities, for the same or a less distance, which *prima facie* evidence may be rebutted by competent testimony on the part of such company, showing that the discrimination, if any, was not an unjust one, and the question, upon an issue as to whether any alleged discrimination is unjust or not, shall be a question of fact to be tried and determined as any other issue of fact in a case: *Provided*, that when the distance from the place of shipment to the point of destination of any freight is fifty miles or less, a charge not exceeding thirty cents per hundred pounds may be made for the transportation thereof. (As amended by Laws, 1879, Regular Session, ch. 109, p. 117.) (a)

(a) The rates for freight, to which the Southern Pacific Railroad Company is limited by its charter, have no reference to any road except that which the company is authorized to build and operate in Texas; therefore, a charge of freight, in excess of the limits prescribed by its charter, over a road which the company owns and operates outside of the State, is no violation of the provisions of its charter. *Knight vs. Southern Pacific Railroad*, 41 Tex., 406. In a suit against a company for overcharging on certain freight, by rating cotton as "measurement freight" instead of "weight freight," (the company's charges being limited per foot as well as per 100 pounds,) it was held erroneous to admit the testimony of merchants and shippers to prove that, by custom, cotton was "weight freight" and not "measurement freight." The company might lawfully rate cotton either by measurement or by weight, but could not charge according to both standards on the same lot of freight. *Central R. Co. vs. Hearne*, 32 Tex., 546. Independently of the act of 1879, and before its enact-

ART. 4258. Penalty for Violation of Two preceding Articles.—Any railroad company which may violate either of the two preceding articles shall forfeit and pay to the person injured thereby the sum of five hundred dollars, to be recovered before any court having jurisdiction of the amount, in any county through or into which the passenger or freight may have been transported.

CHAPTER 11.

OF THE COLLECTION OF DEBTS FROM RAILROAD CORPORATIONS.

ARTICLE		ARTICLE	
4259.	All property of company subject to execution.	4263.	Continued—Effect of—Stockholders not released from unpaid subscriptions.
4260.	Purchaser of road and franchises vested with the powers of the company.	4264.	Continued—Directors of sold out company continue trustees for stockholders and creditors.
4261.	Sale under deed of trust, when and where made.	4265.	Suits not to abate by reason of sale.
4262.	Road-bed, track, franchise and chartered powers to be sold as an entirety.	4266.	This title not to apply to certain debts.

ART. 4259. All Property of Company subject to Execution.—The rolling stock and all other movable property belonging to any railroad company or corporation shall be considered personal property, and its real and personal property or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals, and no such property shall be exempt from execution and sale. (Const., art. 10, § 4.)

ART. 4260. Purchaser of Road and Franchises vested with the Powers of the Company.—In case of the sale of the entire road bed, track, franchise and chartered right of a railroad company, whether by virtue of an execution, order of sale, deed of trust or any other power, the purchaser or purchasers at such sale and their associates, shall be entitled to have and exercise all the powers, privileges and franchises granted to said company by its charter, or by virtue of the general laws; and the said purchaser or purchasers and their associates shall be deemed and taken to be the true owners of said charter and corporators under the same, and vested with all the powers, rights, privileges and benefits thereof, in the same manner and to the same extent as if they were the original corporators of said com-

ment, railway companies were held to the strictest impartiality in the conduct of their business, in withholding privileges or preferences from one customer which were not extended to all others. But this rule was subject to the qualification, that where the rate of freight was reasonable for all customers, contracts for a less rate might be made in special cases, when under all the circumstances, the discrimination was reasonable and just *Houston, etc., R. Co. vs. Rust, 58 Tex., 98.*

pany; and shall have power to construct, complete, equip and work the road upon the same terms and under the same conditions and restrictions as are imposed by their charter and the general laws. (P. D., 4912.) (a)

ART. 4261. Sale under Deed of Trust, when and where made.—Whenever a sale of the road-bed, track, franchise and chartered rights and privileges of any railroad company is made by virtue of any deed of trust or power, the same shall be made at the time and place mentioned in the deed of trust or power, and in accordance with the provision of the same as to notice, and in other respects; and if the same be not specified, such sale shall be made as hereinafter provided for sales under execution or order of sale. (P. D., 4913.)

ART. 4262. Road-bed, Track, Franchise and chartered Powers to be sold as an Entirety.—Whenever judgment is rendered against any railroad company, execution shall issue thereon, and be levied and collected as in other civil causes, except that when the road-bed, track, franchise and chartered powers and privileges of said railroad company is levied upon, the levy and sale must take place in the county where the principal office of such company is situated, and the entire road-bed, track, franchise and chartered powers and privileges of such company shall be levied upon and sold. The provisions of this article shall be observed so far as they are applicable in all cases where, by any decree of a competent court, a sale of the road-bed, track, franchise and chartered powers and privileges of any railroad company is directed to be made. (P. D., 4914.) (b)

(a) In *Scogin vs. Perry*, 32 Tex., 21, it was held that in view of the statutory provisions contained in arts. 4930 and 4912, of Paschal's Digest, railroads cannot be regarded as "real estate," in Texas; and further, that judgments, whether recorded or not, did not operate as a lien on the railroad of the Southern Pacific Railroad Company, against which they were rendered; and, also, that the execution first levied, was entitled to the proceeds resulting from the sale of the road. Under the act of December 19, 1857, (Paschal's Dig., arts. 4912, 4914), the railroad track, franchise, chartered powers and privileges of a railway company were deemed an entire thing, and a levy was held to embrace the whole road-bed and track whether situated in one county or not, and the same could be advertised and sold at the court house door of the county of the principal office. *Central R. Co. vs. Henning*, 52 Tex., 466.

(b) When the franchises, track, etc., of a railroad company are sold under execution, as allowed by art. 4914, Pasch. Dig., (Rev. Stats., 1879, art. 4262,) the directors become trustees by virtue of the subsequent art. 4916 (Rev. Stats., 1879, art. 4264,) and all unsold property of the company passes to such trustees, for the benefit of any creditors of the company. Stockholders can claim no priority over creditors of the company. *Good vs. Sherman*, 37 Tex., 660. The law relating to the administration of the assets of sold out railroad companies construed. *Witherspoon vs. Texas Pacific R. Co.*, 48 Tex., 309. The trust cast by the statute upon the directory existing at such sale, is to be exercised collectively, and in their aggregate capacity, and not as individuals, *Ib.* The directors must have accepted the trust before they can be held responsible for the discharge of the duties of trustees, *Ib.* Equitable proceeding by judgment creditor against the trustee of a sold out railroad company. Garnishment of another company alleged to be indebted to sold out company. Effect of twelve years lapse of time. *Galveston, etc., R. Co., vs. Butler*, 56 Tex., 506; *Galveston, etc., R. Co., vs. McDonald*, 53 Tex., 510.

ART. 4263. Continued—Effect of—Stockholders not released from unpaid Subscriptions.—The sale of the road-bed, track, franchise and chartered rights, as hereinbefore provided, shall not be held to pass or convey to the purchaser any right or claim to recover from the former stockholders of said company any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the sold-out company, as herein-after provided. (P. D., 4915.)

ART. 4264. Continued—Directors of sold-out Company continue Trustees for Stockholders and Creditors.—Whenever a sale of the road-bed, track, franchise and chartered powers and privileges is made as hereinbefore provided (unless other persons shall be appointed by the Legislature, or by some court of competent authority), the directors or managers of the sold-out company at the time of the sale, by whatever name they may be known in law, shall be the trustees of the creditors and stockholders of the sold-out company, and shall have full powers to settle the affairs of the sold-out company, collect and pay the outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses; and the persons so constituted trustees, shall have authority to sue by the name of the trustees of such sold-out company, and may be sued as such, and shall be jointly and severally responsible to the creditors and stockholders of such company, to the extent of its property and efforts that shall come to their hands. (P. D., 4916.) (a)

ART. 4265. Suits not to abate by Reason of Sale.—No suit pending for or against any railroad company at the time that the sale may be made of its road-bed, track, franchise and chartered privileges shall abate, but the same shall be continued in the name of the trustees of the sold-out company. (Ib.)

ART. 4266. This Title not to apply to certain Debts.—The provisions of this title shall not apply to any debt, execution or deed of trust held by the State against any railroad company, because of any loan made by the State to any company under the provisions of the act to provide for the investment of the special school fund, or any other law which authorizes the loan of money to railroad companies; nor shall any creditor of any railroad company be allowed to make the State a party to any suit brought for the enforcement of

(a) See note to art. 4262, *ante*. As to service of process upon directors as trustees, after sale of corporate property, see *Witherspoon vs. Texas Pacific R. Co.* 48 Tex., 309.

any debt, mortgage, or deed of trust or lien on any railroad, or permitted to require the State to foreclose any lien which it may have upon any road, but the lien of the State and its right to enforce the same shall continue as if this title had never been passed, and as if no sale had been made under the provisions of the same. (P. D., 4917.)

CHAPTER 12.

OF LANDS OF RAILROAD COMPANIES.

ARTICLE	ARTICLE
4267. State grant of sixteen sections for every mile.	4273. Land certificates to be issued to company, when.
4268. Certain narrow guage roads not entitled to lands.	4274. Land to be surveyed upon application of holder of certificate.
4269. Prismoidal roads entitled to eight sections.	4275. Surveys, how made.
4270. Construction of this chapter.	4276. Land Commissioner to issue patents for odd sections.
4271. Governor to appoint engineer to inspect road.	4277. Lands of railroad company must be alienated.
4272. Contents of engineer's report.	

ART. 4267. State Grant of Sixteen Sections for every Mile.—Any railroad corporation heretofore chartered, or which may be hereafter organized under the general laws, shall, upon the completion of a section of ten miles or more of its road, be entitled to receive, and there is hereby granted to every such railroad sixteen sections of land for every mile of its road so completed and put in good running order. (Act, Aug. 15, 1876, p. 153, § 1.) (a)

(a) The act of January 30, 1854, (Pasch. Dig., art. 4945,) granting sixteen sections of land to railroad companies for every mile of road constructed and put in running order was within the constitutional powers of the Legislature. *Houston, etc., R. Co., vs. Kuechler*, 36 Tex., 382. The limitation of ten years within which the work was to be completed was suspended by the subsequent acts of 1862 for the relief of railroad companies. (Pasch. Dig., arts. 4961, 4965.) The act of 1854 was, therefore, in force Nov. 13, 1866, when by an "act for the benefit of railroad companies," the grant of lands to such companies was extended for ten years more. *Houston, etc., R. Co., vs. Kuechler, supra*. It has been the policy of the State to reserve alternate sections, in making donations of land to railroads, from the act of Jan. 30, 1854 (Pasch. Dig., art. 4955,) until the Constitution of 1869 went into effect prohibiting land grants to railroads. *Galveston, etc., R. Co., vs. Gross*, 47 Tex., 428. A railroad company is not entitled to certificates under its land grant otherwise than on the alternate section plan. *Ib.* The *alternate* or *even* sections of land reserved for the use of the State by the act of Feb. 4, 1856, incorporating the Memphis, El Paso and Pacific Railroad Company, when surveyed and delineated on the map of the district surveyor ceased to be public land, and cannot again be regarded as a part of the public domain so as to subject them to location. By section 3 of article 10 of the Constitution of 1866, such lands are set aside as a part of the perpetual school fund of the State. *Kuechler vs. Wright*, 40 Tex., 600. Fact case involving priority of location of a tract of land claimed by both parties. *Houston, etc., R. Co., vs. McGehee*, 49 Tex., 481. As to forfeiture of land grant of International Railroad Company, see note to sec. 22, art. iv. Const., 1876, *ante* p. 4.

ART. 4268. Certain Narrow Gauge Roads not entitled to Lands.—No company whose road is of less than three feet gauge shall be entitled to receive any grant of lands under the preceding article. (Ib.)

ART. 4269. Prismoidal Roads entitled to Eight Sections. Companies constructing railroads on the prismoidal plan shall be entitled to receive from the State eight sections of land to the mile, on the same terms as other roads. (Ib.)

ART. 4270. Construction of this Chapter.—This chapter shall not be construed to renew or continue any right to any company which has failed or may fail, to comply with the terms of its charter, with reference to the completion of portions of its road in stated times; nor so as to grant the aid herein provided for to any railroad that has already received or is otherwise entitled to receive aid from the State to the amount of sixteen sections of land to the mile. (Ib.)

ART. 4271. Governor to appoint Engineer to inspect Road.—Any railroad company having completed and put in good running order a section of ten miles or more of its road may give notice of the same to the Governor, whose duty it shall be to appoint some skillful engineer, if there be no State engineer, to examine said completed road, and report in writing and under oath to the Governor the result of such examination. (15th Leg., p. 153, § 2.)

ART. 4272. Contents of Engineer's Report.—It must appear from said report—

1. That said road is substantially built.
2. That it is fully equipped for the transportation of both passengers and freight.
3. That the same is operated by steam or other mechanical power.
4. That it is constructed of iron rails not less than thirty pounds to the lineal yard.
5. If it be a prismoidal road, that the rails weigh not less than twenty-two pounds to the lineal yard.
6. The length of such completed road; and,
7. That the same has been constructed in accordance with its charter, or with the general laws under which it may be constructed, or with the general laws in force regulating railroads. (Ib.)

ART. 4273. Land Certificates to be issued to Company, when.—The report mentioned in the preceding article shall be made to the Governor, and thereupon, if the Governor be fully satisfied that

the same is correct and true, he may certify the fact to the Commissioner of the General Land Office, stating in such certificate the number of sections of land to which said railroad company is entitled, and said commissioner shall file said certificate in his office, and proceed to issue certificates to said company for the number of sections of land to which they are entitled.

ART. 4274. Land to be Surveyed upon Application of Holder of Certificate.—When said certificates have been issued, the company to whom issued, or its assignees, may apply to the surveyor of any land district to survey such lands out of any unappropriated public land in his district. (Ib., p. 153, § 2.)

ART. 4275. Surveys, how made.—Said surveys shall be made in alternate sections or half sections, as nearly square as practicable, one of such surveys for the company and one for the State for the benefit of the public school fund. (Ib.)

ART. 4276. Land Commissioner to issue Patents for odd Sections.—A map of all such surveys shall be returned with the field notes thereof to the General Land Office, when the Commissioner of the General Land Office shall number contiguous surveys with even and odd numbers, and shall issue to the company patents for the odd surveys. (Ib.)

ART. 4277. Lands of Railroad Company must be alienated.—All lands acquired by railroad companies, under the provisions of this chapter or any general laws, shall be alienated by said companies, one-half in six years and one-half in twelve years from the issuance of patents to the same, and all lands so acquired by railroad companies, and not alienated as herein required, shall be forfeited to the State and become a part of the public domain and liable to location and survey as other unappropriated lands. (Ib., § 3.) (a)

CHAPTER 13.

OF FORFEITURE OF THE CHARTER.

ARTICLE

4278. Upon failure to construct road.

4279. So as to branch lines.

ARTICLE

4280. Neglect to make annual report.

(a) The representations of the agent of a railway company, made in the sale of lots at a depot town, as to the future location of the road with reference thereto, when made as inducements to the purchaser of a lot to contract therefor, become, when acted on in making the purchase, assurances and undertakings, which the road is bound to comply with. *Greenwood vs. Pierce*, 58 Tex., 130.

ART. 4278. Upon Failure to construct Road.—If any railway corporation organized under this title shall not, within two years after its articles of association have been filed and recorded as provided by this title, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and if any such railroad corporation, after the first two years from the date of its organization, shall fail to construct, equip and put in good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall, in either such cases, forfeit its corporate existence, and its powers shall cease as far as it relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation. (Act, Aug. 15, 1876, p. 149, § 31.) (a)

ART. 4279. So as to Branch Lines.—The preceding article shall apply as well to branch lines as to main lines of railroad. (Ib., p. 143, § 7.)

ART. 4280. Neglect to make Annual Report.—Any railroad corporation which shall neglect to make the annual report to the comptroller required by this title, and which has been notified by the comptroller of such failure, and shall still neglect to make such report, within three months after such notice, shall forfeit its charter. (P. D., 4902.) (b)

(a) Chapter 51, acts 1879, extra session, instead of amending the above article, amends section thirty-one of the act of 1876, and cuts the following figure in amending the Revised Statutes:

“SEC. 31. If any railway corporation, organized under this act, shall not, within two years after its articles of association shall be filed and recorded as provided in the second section of this act, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road; and if such railroad corporation, after the first two years, shall fail to construct, equip and put in good running order at least twenty additional miles of its road, each and every succeeding year, until the entire completion of its line, such corporation shall, in either of such cases, forfeit its corporate existence, and its powers shall cease as far as relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation. *Provided*, that any railroad company heretofore organized under the act to which this is an amendment, which shall, previous to the taking effect of this amendment, have graded as much as ten miles of its road-bed, shall have an additional time of twelve months from the day of the passage of this amended act, to construct, equip and put in good running order at least ten miles of its proposed road, as required in the section herein amended; and any such company may then and thereafter proceed to construct twenty miles of its proposed road each and every succeeding year after the lapse of the additional period of twelve months hereby given, and shall not, in such case, forfeit its corporate existence, or any of the powers or privileges conferred by said act or any other law of this State.

“SEC. 2. That article 4278, of chapter 13, [title LXXXIV] of the Revised Statutes, be and the same is hereby repealed, in so far as it conflicts with the provisions of this act.”

(b) A constitutional provision that “two-thirds of the Legislature shall have power to revoke and repeal all private corporations by making compensation for the franchise” is not a limitation upon the power of the State to that mode of revocation alone. *State vs. Southern Pacific R. R. Co.*, 24 Tex., 80. Where facts are presented which conclusively show that the high public trusts involved in the franchise granted to a corporation have been grossly abused to the public detriment, or that the company has placed itself or is placed in such irretrievable embarrassment as to be certainly unable to progress with the enterprise, as contemplated by the charter, then the State has the right to resume the franchise. (Ib.)

TITLE 89.

SEALS AND SCROLLS.

ARTICLE 4487.—Abolition of use of seal except in case of corporations.

ART. 4487. **Abolition of Seal except in Case of Corporations.**—No private seal or scroll shall be necessary to the validity of any contract, bond or conveyance, whether respecting real or personal property, or any other instrument of writing, whether official, judicial or private, except such as are made by corporations, nor shall the addition or omission of a seal or scroll in any way affect the force and effect of the same. (Acts, April 28, 1873; Feb. 2, 1858; P. D., 5087).

TITLE 93.

STOCK LAWS.

CHAPTER 2.

OF THE SALE, SLAUGHTER AND SHIPMENT OF ANIMALS.

ARTICLE 4568.—Register of cattle shipped to be kept. | ARTICLE 4569.—County clerk to make a copy.

ART. 4568. **Register of Cattle shipped to be kept.**—The commanders, or agents of all vessels, and the agents of all railroads on which cattle are exported from the State, and the proprietors or agents of all establishments for the slaughter of cattle within the State, shall keep a register of all cattle shipped or slaughtered, with the marks, brands and general description of such animals, and the names of the persons shipping or selling the same, the date of their shipment or purchase, and the county from which they were driven. (Act, Sept. 5, 1850, p. 27, § 1; P. D., 460.)

ART. 4569. County Clerk to make a Copy.—Such register shall be deposited with the clerk of the county court of the county where the cattle were shipped or slaughtered on the first day of each month, and such clerk shall at once copy the same in a well bound book to be kept for that purpose, and return the original to the party depositing it. The record kept by the county clerk shall be open at all times to public inspection without charge. (Ibid, § 2; P. D., 461.)

TITLE 95.

TAXATION.

CHAPTER 1.—Of the levy of taxes and payment of occupation taxes.

2.—Of the property subject to taxation and the mode of rendering the same.

3.—Of the assessment of taxes.

6.—Of municipal taxes to pay subsidies in aid of railroads and other internal improvements.

CHAPTER 1.

OF THE LEVY OF TAXES AND PAYMENT OF OCCUPATION TAXES.

ARTICLE 4665.—Express, sleeping car and railroad companies.

ART. 4665. Express, Sleeping Car and Railroad Companies.—There shall be levied on and collected from every person, firm, company or association of persons pursuing any of the following named occupations, an annual tax, except when herein otherwise provided, on every such occupation or separate establishment, as follows :

* * * * *

From any person, firm, or association of persons, doing an express business in this State, an annual tax of five hundred dollars shall be levied and collected, this tax to be paid by such person, firm, or association of persons, doing an express business, to the Comptroller of Public Accounts, whose receipt, under seal, shall be issued to the company or companies, certified copies of which shall be evidence of the payment of the State, county and municipal occupation tax.

From every person, firm, or association of persons owning or running any palace, sleeping, or dining-room cars, on any railroad in this State, there shall be collected an annual tax of fifty cents per mile for each and every mile of any and all railroads in this State over which such cars may run. The tax herein due shall be paid by such person, firm, or association of persons, to the Comptroller of Public Accounts, whose receipt under seal shall be issued to the person, company or firm, certified copies of which shall be evidence of the payment of State tax: *Provided*, that nothing herein contained shall authorize the levy of any county or municipal tax upon such person, firm or association of persons. (a.)

From every person, firm or association of persons owning or running any railroad cars, steamboats or stage coaches in this State there shall be collected quarterly on the first days of January, April, July and October of each year, a tax of three-fourths of one per centum on steamboats and stage coaches, and one-half of one per centum on railroads upon their gross receipts from all passenger travel within this State, the said gross receipts to be returned under oath by said owner, agent or manager to the Comptroller, and said tax to be collected by the Comptroller under such regulations as he may prescribe: *Provided*, That nothing herein contained shall authorize the levy of any county or municipal tax upon such person, firm or association of persons. (As amended by Laws, 1882, Called Session, ch. 17, pp. 18, 22.)

(a) Chapter 134 of the Acts of 1879, (regular session), levied an occupation tax on the owners of palace, sleeping and dining-room cars in the following terms, viz.: "From every person, firm or association of persons owning or running any palace, sleeping or dining-room cars, not owned by the railroad company, on any railroad in this State, there shall be collected an annual tax of two dollars per mile, for each and every mile of any and all railroads in this State over which such cars may run; the tax herein due shall be paid by said person, firm or association of persons to the comptroller of public accounts, whose receipt under seal shall be issued to the company, person or firm, certified copies of which shall be evidence of the payment of State tax; *Provided*, That nothing herein contained shall authorize the levy of any county or municipal tax upon such person, firm or association of persons." This provision was repealed by chapter 43 of the acts of the same year at the special session, which levied an annual direct *ad valorem* tax of one-half of one per cent. upon the value of such cars. Chapter 55 of the general laws of 1881, re-enacted the provisions found in chapter 134 of the acts of 1879. The matter in the text is art. 4665 as amended by Laws, 1882, called session, ch. 17, pp. 18, 22.

CHAPTER 2.

OF THE PROPERTY SUBJECT TO TAXATION, AND THE MODE OF RENDERING THE SAME.

ARTICLE	ARTICLE
4671. Personal property includes what.	4686. Continued.
4672. Definition of terms.	46-7. Continued—Rolling stock, how listed.
4675. Listing of property by receiver.	4688. Assessments and collections of corporate property.
4678. Listing of property by railroad companies.	
4681. Continued.	

ART. 4671. Personal Property, includes what.—Personal property shall, for purposes of taxation, be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of the State, whether the same be in or out of the State; all ships, boats and vessels belonging to inhabitants of this State, if registered in the State, whether at home or abroad, and all capital invested therein; all moneys at interest, either within or without this State, due the person, to be taxed over and above what he pays interest for, and all other debts due such persons over and above their indebtedness; all public stock and securities; all stock in turnpikes, railroads, canals and other corporations, (except national banks) out of the State, owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof resides in or out of this State, and the income of any annuity, unless the capital of such annuity be taxed within the State; all shares in any bank organized or that may be organized under the law of the United States; all improvements made by persons upon lands held by them, the title to which is still vested in the State of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company or any other corporations, or any other corporation whose property is not subject to the same mode and rule of taxation as other property. (Act, Aug. 21, 1876, p. 275, § 3; Acts, 1879, ch. 40, p. 39.) (a)

(a) The full text of the act of 1879, is as follows: SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That section third of an act entitled "An act defining what money and property is subject to taxation or exemption and the mode of listing the same," approved August 21, 1876, shall be so amended as to read as follows: SEC. 3. Personal property shall, for the purpose of taxation, be construed to include all goods, chattels, moneys, credits and effects, wheresoever they may be in this State: *Provided*, that moneys, credits, bonds and other evidences of debt shall be included, whether the same be in or out of this State; all ships, boats and vessels belonging to the inhabitants of this State, if registered in this State, whether at home or abroad, and all capital invested therein; all moneys at interest, either within or without this State, due the persons to be taxed over and above what he pays interest for; and all other debts due such persons over and above their indebtedness; all public stocks and securities; all stocks in turnpikes, railroads, canals and other

ART. 4672. **Definition of Terms.**— * * * * *

The term "person" shall be construed to include firm, company or corporation.

ART. 4675. **Listing of Property by Receiver.**—All property shall be listed or rendered in the manner following: * * *

7. The property of corporations whose assets are in the hands of receivers, by such receivers.

ART. 4678. **Listing of Property by Railroad Companies.**
All railroads, telegraph, plank road and turnpike companies shall list all of their real and personal property, giving the number of miles of road-bed and line in the county where such road-bed and line is situated, at the full and true value, except when such company may own personal property or real estate in an unorganized county or district, then they shall list such property to the comptroller.

ART. 4681. **Continued.**—Such statement shall truly and distinctly set forth—

1. The name of the owner.

* * * * *

11. The number of miles of railroad in the county.

12. The value of railroads and appurtenances.

* * * * *

27. Office furniture and the value thereof.

* * * * *

42. Value of all property of companies and corporations other than property hereinbefore enumerated.

* * * * *

45. Every franchise, the description and value thereof.

46. Value of all other property not enumerated above.

corporations (except national banks) out of the State owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of the State, and the income of any annuity unless the capital of such annuity be taxed within the State; all shares in any bank organized or that may be organized under the law of the United States; all improvements made by persons upon lands held by them, the title to which is still vested in the State of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company, or any other corporation, whose property is not subject to the same mode and rule of taxation as other property: *Provided*, that nothing in this section shall be construed as to exempt from taxation any improvements on lands granted to any railroad company or other corporation and exempted from taxation for a term of years. Whereas, the time for assessment of property in this State is at hand, and thousands of dollars worth of property in this State is escaping taxation under the present law, such an emergency exists as [is] contemplated by the Constitution of the State for the immediate passage of this bill; therefore, this act shall take effect from and after its passage. Approved March 20th, A. D. 1879. Takes effect from and after its passage. [Laws, 1879, Regular Session, ch. 40, p. 39.]

ART. 4686. Continued.—It shall be the duty of every railroad corporation in this State to deliver a sworn statement, on or before the first day of June in each year, to the assessor of each county and incorporated town into which any part of their road shall run, or in which they own or are in possession of real estate, a classified list of all real estate owned or in the possession of said company in said county or town, specifying—

1. The whole number of acres of land owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of their superstructure and value thereof; and construing "superstructure" to mean the ties, chairs, rails, spikes, frogs and switches, whether such superstructure be laid on land or on artificial foundations.

3. The buildings, machinery and tools therein belonging to the company or in their possession, describing them by location, with the estimated value.

ART. 4687. Continued--Rolling Stock, how listed.—It shall be the duty of every railroad corporation in this State to deliver a sworn statement, on or before the first day of April in each year, to the assessor of the county in which its principal office is located, setting forth the true and full value of the rolling stock of such railroad, together with the names of the different counties through which the road may run, and the number of miles of road-bed in each county. Such statement shall be made in duplicate, and one copy thereof shall be forwarded immediately by the assessor to the comptroller of public accounts, who shall proceed at once to apportion the tax upon such rolling stock among the several counties according to the amount of road-bed in each, and to certify such apportionment to the assessors of such counties, who shall list and enter the same upon the rolls for taxation as other personal property situated in the county. (Const., art. 8, § 8; Act, Aug. 21, 1876, p. 280, § 19.)

ART. 4688. Assessments and Collections of Corporate Property.—All property of private corporations, except in cases where some other provision is made by law, shall be assessed in the name of the corporation, and in collecting the taxes on the same all the personal property of such corporation shall be liable to be seized whenever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes. All statements and lists made by corporations that are required to be sworn to shall be verified by the affidavit and signature of the secretary of said corporation, and if they have no secretary, the officer who discharges the duties of secretary of said corporation. (Ibid., §§ 20, 21.)

CHAPTER 3.

OF THE ASSESSMENT OF TAXES.

ARTICLE
4710. Manner and form of assessing.

ARTICLE
4715. Powers of boards of equalization.

ART. 4710. **Manner and Form of Assessing.**—The manner and form of assessing property rendered for taxation shall be substantially as follows, to wit:

1. The name of the owner.

* * * * *

11. Number of miles of railroad in the county.

12. Value of railroads and appurtenances, including the proportionate amount of rolling stock to the county after the assessment of such rolling stock and its apportionment among the several counties by the comptroller, as hereinbefore provided.

* * * * *

42. The value of property of companies and corporations other than property hereinbefore enumerated.

* * * * *

45. Every franchise, the description and value thereof.

46. The value of all other property not enumerated above.

ART. 4715. **Powers of Boards of Equalization.**—The boards of equalization shall have power, without complaint from any one, to supervise the assessments of their respective counties, and if satisfied that the valuation of any property is not just and fair, to increase or diminish the same, and to affix a proper valuation thereto; and their action in such cases shall be a final and not subject to revision by said board or any other tribunal thereafter. (See Acts, 1879, ch. 47.)

CHAPTER 6.

OF MUNICIPAL TAXES TO PAY SUBSIDIES IN AID OF RAILROADS AND OTHER INTERNAL IMPROVEMENTS.

ARTICLE
4778. Such taxes how applied.
4779. To be collected by city officers.
4780. Bond of the collecting officer.

ARTICLE
4781. Taxes may be paid in what.
4782. To be paid over every month.
4783. If insufficient, additional levy to be made.

ART. 4778. Such Taxes how applied.—All taxes levied, assessed and collected for the purpose of paying the interest and principal of bonds heretofore issued by cities or towns to aid in the construction of railroads and other works of internal improvement, shall be applied solely to the objects for which they were levied, under the direction of the comptroller, as follows: *First*, to the payment of the expenses of assessing and collecting the same; *second*, to the payment of the annual interest of such bonds, and not less than two per cent. of the principal; and if there be any excess on hand after making the above payments for the current year, it shall be used in the purchase and cancellation of said bonds. (Act, Aug. 18, 1876, p. 174, § 1.)

ART. 4779. To be collected by City Officers.—All such taxes shall be assessed and collected by the same officers whose duty it is to assess and collect the other municipal taxes, who shall receive the same rates of commission allowed for assessing and collecting the *ad valorem* tax of such city. The same remedies shall be used to enforce the assessment, collection and paying over of such taxes as are or may hereafter be provided by law to enforce the assessment, collection and paying over of other municipal taxes. (Ibid., § 2.)

ART. 4780. Bond of the Officer.—The officer whose duty it is to collect the aforesaid taxes shall give bond, with two or more sufficient sureties, to be approved by the mayor and board of aldermen of such city, in a sum fifty per cent. greater than the estimated annual amount of said taxes, which bond shall be payable to the State, and shall be conditioned for the faithful assessing, collecting and paying over of said tax into the State treasury, as provided by law, and said collector shall be amenable and subject to all laws enacted to secure the honest and faithful performance of the duties of collectors of taxes. (Ibid., § 3.)
(a)

ART. 4781. Taxes may be paid in what.—It shall be lawful for the collector to receive in payment of the taxes herein specified, current money or the matured coupons of the bonds for the payment of which such tax may have been levied. (Ibid., § 4.)

ART. 4782. To be paid over every Month.—The collector of taxes, levied under the provisions of this chapter, shall pay over to the State Treasurer, at the beginning of each and every month, all moneys

(a) Chapter 105, section 8, acts of 1879, makes collectors liable for damages on their official bonds, at the suit of any person holding bonds or coupons, for neglecting or refusing to collect the taxes levied for the payment of the interest and sinking fund of "compromise" bonds provided for in that chapter; and if anyone elected or appointed collector fails, neglects or refuses to give bond for the collection of such taxes, and the board of aldermen neglect or refuse to appoint some person who will give said bond and collect said taxes, it is made the duty of the governor to appoint some suitable person to collect it.

or coupons he may have collected during the preceding month, deducting his legal commissions on the amount so paid, and shall make a report of his collections to the mayor and city council at its first regular meeting in each month. (Ibid., § 5.)

ART. 4783. If Insufficient, additional Levy to be made.

If it shall be ascertained, at any time, that the tax which has been levied for the payment of the city bonds issued under the provisions of law is insufficient to pay the annual interest and two per cent. annually of the principal of such bonds, besides the expenses of assessing, collecting and paying over such tax, it shall be the duty of the comptroller to inform the mayor of said city of the fact ; and it shall be the duty of the city council, and they shall, upon such information, levy such additional tax, and cause the same to be collected, as will be sufficient to make such payment ; which levy shall be continued in force until the whole amount of principal and interest of said bonds shall have been fully paid. (Ibid., § 6.)

PROVISIONS
OF THE
PENAL CODE OF TEXAS, 1879,
RELATING TO
RAILROADS.

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PROVISIONS
OF THE
PENAL CODE OF TEXAS, 1879,
RELATING TO
RAILROADS.

TITLE 1.

GENERAL PROVISIONS RELATING TO THE WHOLE CODE.

CHAPTER 2.

OF DEFINITIONS.

ARTICLE 24. "Person" includes corporation.

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

TITLE 7.

OFFENSES WHICH EFFECT THE FREE EXERCISE OF RELIGIOUS OPINION.

CHAPTER 2.

OF SUNDAY LAWS.

ARTICLE

183. Penalty for working or compelling work
on Sunday.

ARTICLE

184. Exception in favor of railroad employes.

ART. 183. Penalty for working or compelling Work on Sunday.—Any person who shall hereafter labor, or compel, force or oblige his employes, workmen or apprentices, to labor on Sunday, shall be fined not less than ten nor more than fifty dollars. (Act, Dec. 2, 1871, p. 62.)

ART. 184. Exception in Favor of Railroad Employes.—The preceding article shall not apply to household duties, works of necessity or charity; nor to necessary work on farms or plantations in order to prevent the loss of any crop; nor to the running of steamboats and other water crafts, rail cars, wagon trains, common carriers, nor to the delivery of goods by them or the receiving or storing of said goods by the parties, or their agents to whom said goods are delivered; nor to stages carrying the United States mail or passengers; nor to foundries, sugar mills, or herders who have a herd of stock actually gathered and under herd; nor to persons traveling; nor to ferrymen or keepers of toll-bridges, keepers of hotels, boarding houses, and restaurants and their servants; nor to keepers of livery stables and their servants; nor to any person who conscientiously believes that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for religious reasons. (Ib.)

TITLE 9.

OFFENSES AGAINST THE PUBLIC PEACE.

CHAPTER 3.

OF AFFRAYS AND DISTURBANCES OF THE PEACE.

<p><small>ARTICLE</small> 314. Penalty for disturbing peace in a public place.</p>	<p><small>ARTICLE</small> 315. "Public place" defined</p>
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ART. 314. Penalty for disturbing Peace in a Public Place.—If any person shall go into any public place, or into or near any private house, or along any public street or highway near any private house, and shall use loud and vociferous or obscene, vulgar or indecent language, or swear, or curse, or expose his person, or rudely display any pistol or other deadly weapon in such public place, or upon such public street or highway, or near such private house, in a manner calculated to disturb the inhabitants thereof, he shall be fined in a sum not exceeding one hundred dollars. (Act, June 20, 1876, p. 24; P. C., 382.)

ART. 315. "Public Place" defined. A public place within the meaning of the two preceding articles, is any public road, street or alley, of a town or city, inn, tavern, store, grocery, work shop, or any place to which people commonly resort for purposes of business, recreation or amusement. (P. C., 383.)

TITLE 13.

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

CHAPTER 1.

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

ARTICLE 405. Obstructing public highway or bridge.

ART. 405. **Obstructing Public Highway or Bridge.**—If any person shall willfully obstruct or injure, or cause to be obstructed or injured in any manner whatsoever, any public road or highway, or any street or alley in any incorporated town or city, or any public bridge or causeway, he shall be fined in a sum not exceeding five hundred dollars. (Act, Feb. 11, 1860, p. 97; P. C., 399*d*.)

TITLE 14.

OFFENSES AGAINST TRADE, COMMERCE AND THE CURRENT COIN.

CHAPTER 1.

OF FORGERY AND OTHER OFFENSES AFFECTING WRITTEN INSTRUMENTS.

ARTICLE
431. Forgery defined.

ARTICLE
436. "Another" includes corporation.

ART. 431. **Forgery defined.**—He is guilty of forgery who, without *lawful authority*, and with intent to *injure* or *defraud*, shall make

a false *instrument in writing*, purporting to be the act of *another*, in such manner that the false instrument so made, would (if the same were true) have created, increased, diminished, discharged, or defeated any *pecuniary obligation*, or would have transferred, or in any manner have affected any *property* whatever. (P. C., 431.)

ART. 436. **“Another” includes Corporation.** The instrument must purport to be the act of “another,” and within the meaning of this word, as used in defining forgery, are included this State, the United States, or either of the States or territories of the Union; all the several branches of the government of either of them; all public or private bodies, politic and corporate; all courts; all officers, public or private, in their official capacity; all partnerships in professions or trades; and all other persons, whether real or fictitious, except the person engaged in the forgery. (P. C., 439.)

TITLE 16.

OFFENSES AGAINST REPUTATION.

CHAPTER 1.

OF LIBEL.

ARTICLE 637. Recorder of minutes of corporation, not liable.	ARTICLE 639. Intent to injure not presumed.
638. Members of corporation assenting to libel, liable.	644. Scope of this title.

ART. 637. **Recorder of Minutes of Corporation not Liable.**—Where any person, by virtue of his office, is required to record the proceedings of any department of the government or of any body, corporate or politic, or of any association organized for purposes of business, or as a religious, moral, benevolent, literary or scientific institution, he cannot be charged with libel for any entry upon the

minutes or records of such department, body or association, made in the course of his official duties. (P. C., 638.)

ART. 638. Members of Corporation assenting to Libel Liable.—If any false statement be entered upon the minutes of record of proceedings of any corporate body or association included within the meaning of the preceding article, which would be libel if written, printed, published or circulated by an individual, according to the previous articles of this chapter, the persons being members of such body or association, who assent to, and direct such libelous statement to be made, are guilty of libel under the same rules as if the false statement had been written, published or circulated in any other manner than as a part of the record or proceedings of such body or association, subject, however, to the restrictions contained in the succeeding article. (P. C., 639.)

ART. 639. Intent to injure not presumed.—The libelous statement referred to in the preceding article is not to be presumed to have been made with intent to injure, from the mere fact that such would be the natural result thereof, unless it appear from other facts that the statement was in fact made with that intention. (P. C., 640.)

ART. 644. Scope of this Title.—This title regulates the law with regard to libel when prosecuted as a penal offense, and is not intended to have any operation upon the subject so far as it relates to civil remedies for the recovery of damages. (P. C., 645.)

TITLE 17.

OFFENSES AGAINST PROPERTY.

- CHAPTER 2. Of wilful burning.
3. Of malicious mischief.
 6. Of burglary.
 7. Of offenses on board vessels, steamboats and railroad cars.
 15. Of offenses relating to the protection of stock raisers in certain localities.
 16. Of embezzlement.

CHAPTER 2.

OF WILFUL BURNING.

ARTICLE 668. Burning bridge on public highway.

ART. 668. **Burning Bridge on Public Highway.**—If any person shall wilfully burn any bridge, which by law or usage is a public highway, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years, or by fine not exceeding five thousand dollars. (Act, Feb. 12, 1858, p. 177; P. C., 701.)

CHAPTER 3.

OF MALICIOUS MISCHIEF.

ARTICLE
678. Wrecking railroad trains.ARTICLE
683a. Baggage smashing punished as a misdemeanor.

ART. 678. **Wrecking Railroad Trains.**—If any person shall willfully place any obstruction upon the track of any railroad, or remove any rail therefrom, or in any other way injure such road, or shall do any damage to any railroad, or car, whereby the life of any person might be endangered, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years. If the life of any person is lost by any such unlawful act the offender is guilty of murder. (P. C., 711.)

ART. 683a. **Baggage Smashing punished as a Misdemeanor.**—That any baggage-master, express agent, stage or hack driver, or other common carrier, whose duty it is to handle, remove, transfer or take care of trunks, valises, boxes or other baggage while loading, transporting, unloading, transferring, delivering, storing or handling the same, whether or not in the employ of any transportation company or common carrier, who shall maliciously or carelessly or recklessly break, injure or destroy the said baggage, shall be deemed guilty of a misdemeanor, and, on conviction, be fined in a sum not exceeding one hundred dollars: *Provided*, That a prosecution for a misdemeanor, as provided in this section, shall not be a bar to a civil action for damages. [Act of March 5, 1881, Laws, 1881, p. 17.]

CHAPTER 6.

OF BURGLARY.

ARTICLE
704. "Burglary" defined.

ARTICLE
709. "House" includes buildings of a private corporations.

ART. 704. "**Burglary**" defined.—The offense of "burglary" is constituted by entering a house by force, threats or fraud, at night, or in like manner by entering a house during the day, and remaining concealed therein until night, with the intent, in either case, of committing felony or the crime of theft. (Act, Aug. 21, 1876, p. 231; P. C., 724.)

ART. 709. "**House**" includes **Buildings of Private Corporations**.—A "house," within the meaning of this chapter, is any building or structure erected for public or private use, whether the property of the United States, of this State, or of any public or private corporation or association, or of any individual, and of whatever material it may be constructed. (P. C., 728.)

CHAPTER 7.

OF OFFENSES ON BOARD VESSELS, STEAMBOATS AND RAILROAD CARS.

ARTICLE
717. Burglary of railroad car.
718. Breaking and entering railroad car by day.
719. Theft after entering punished in addition.

ARTICLE
720. Rules applicable to breaking and entering railroad cars.
721. Theft by railroad employe on train.

ART. 717. **Burglary of Railroad Car**.—If any person, by any of the means enumerated in article 704, shall at night enter any vessel, steamboat or railroad car, with intent to commit a felony or theft, he shall be punished by confinement in the penitentiary not less than two nor more than five years. (P. C., 738.)

ART. 718. **Breaking and Entering Railroad Car by Day**.—If any person shall, by breaking, enter a vessel, steamboat or railroad car in the day time, with intent to commit a felony or theft, he shall be punished as prescribed in the preceding article. (P. C., 739.)

ART. 719. Theft after Entering punished in addition.—

If a vessel, steamboat or railroad car be entered in such manner as that the entry, if made in a house, would be burglarly, and the person so entering shall commit theft or any other offense after entry, he shall be punished for the offense defined in article 717, and also for whatever other offense he may so commit.

ART. 720. Rules applicable to Breaking and Entering Railroad Cars.—The definitions, rules and explanations of terms in the preceding chapter are applicable to such terms in this chapter, and the rules prescribed in articles 704, 705, 706, 707 and 708 of the preceding chapter shall also apply to similar cases on board of a vessel, steamboat or railroad car. (P. C., 741.)

ART. 721. Theft by Railroad Employe on Train.—A theft on board a steamboat, vessel or railroad car, committed by a servant or employe, except in cases where there has been an actual breaking in, is punishable simply as theft. (P. C., 742.)

CHAPTER 15.

OF OFFENSES RELATING TO THE PROTECTION OF STOCK RAISERS IN CERTAIN LOCALITIES.

ARTICLE 784. Penalty for receiving cattle for shipment without inspection.

ART. 784. Penalty for Receiving Cattle for Shipment without Inspection.—If any agent of any railroad, steamship, sailing vessel, or shipping company of any kind, shall receive for shipment any horses or cattle, unless such horses or cattle have been duly inspected according to law, he shall be fined not less than twenty-five nor more than one thousand dollars for each animal so unlawfully shipped. (Act, Aug. 23, 1876, p. 302, § 45, as amended by Laws, 1883, Regular Session, ch. 71, p. 71.)

CHAPTER 16.

OF EMBEZZLEMENT.

ARTICLE

786. Embezzlement by agents defined and punished.

ARTICLE

788. Embezzlement by carrier.

ART. 786. Embezzlement by Agents defined and punished.—If any officer, agent, clerk, or attorney at law or in fact, of any incorporated company or institution, or any clerk, agent, attorney at law or in fact, servant or employe of any private person, copartnership, or joint stock association, or any consignee or bailee of money or property, shall embezzle, fraudulently misapply, or convert to his own use without the consent of his principal or employer, any money or property of such principal or employer which may have come into his possession, or be under his care by virtue of such office, agency or employment, he shall be punished in the same manner as if he had committed a theft of such money or property. (P. C., 771.)

ART. 788. Embezzlement by Carrier.—If any carrier to whom any money, goods or other property shall have been delivered to be carried by him, or if any other person who shall be entrusted with such property; shall embezzle or fraudulently convert to his own use any such money, goods or property, either in the mass as the same were delivered or otherwise, he shall be deemed guilty of theft, and shall be punished as prescribed for that offense, according to the value of the money, goods or other property so embezzled or converted. (Act, Feb. 12, 1858, p. 182; P. C., 772.)

PROVISIONS

OF THE

Code of Criminal Procedure of Texas, 1879,

RELATING TO

RAILROADS.

PROVISIONS
OF THE
Code of Criminal Procedure of Texas, 1879,
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RAILROADS.

TITLE 3.

PREVENTION AND SUPPRESSION OF OFFENSES.

CHAPTER 6.

OF THE SUPPRESSION OF OBSTRUCTIONS OF PUBLIC HIGHWAYS.

ARTICLE

124. Public highways not to be obstructed.
125. Obstructions removed on order of county judge.
126. Suit upon bond of person applying for removal.

ARTICLE

127. Defects of form in establishing highway do not vitiate.
128. Removal of obstruction on conviction of defendant.

ART. 124. **Public Highways not to be Obstructed.**—Whenever any road, bridge, or the crossing of any stream is made, by the proper authority, a public highway no person shall place an ob-

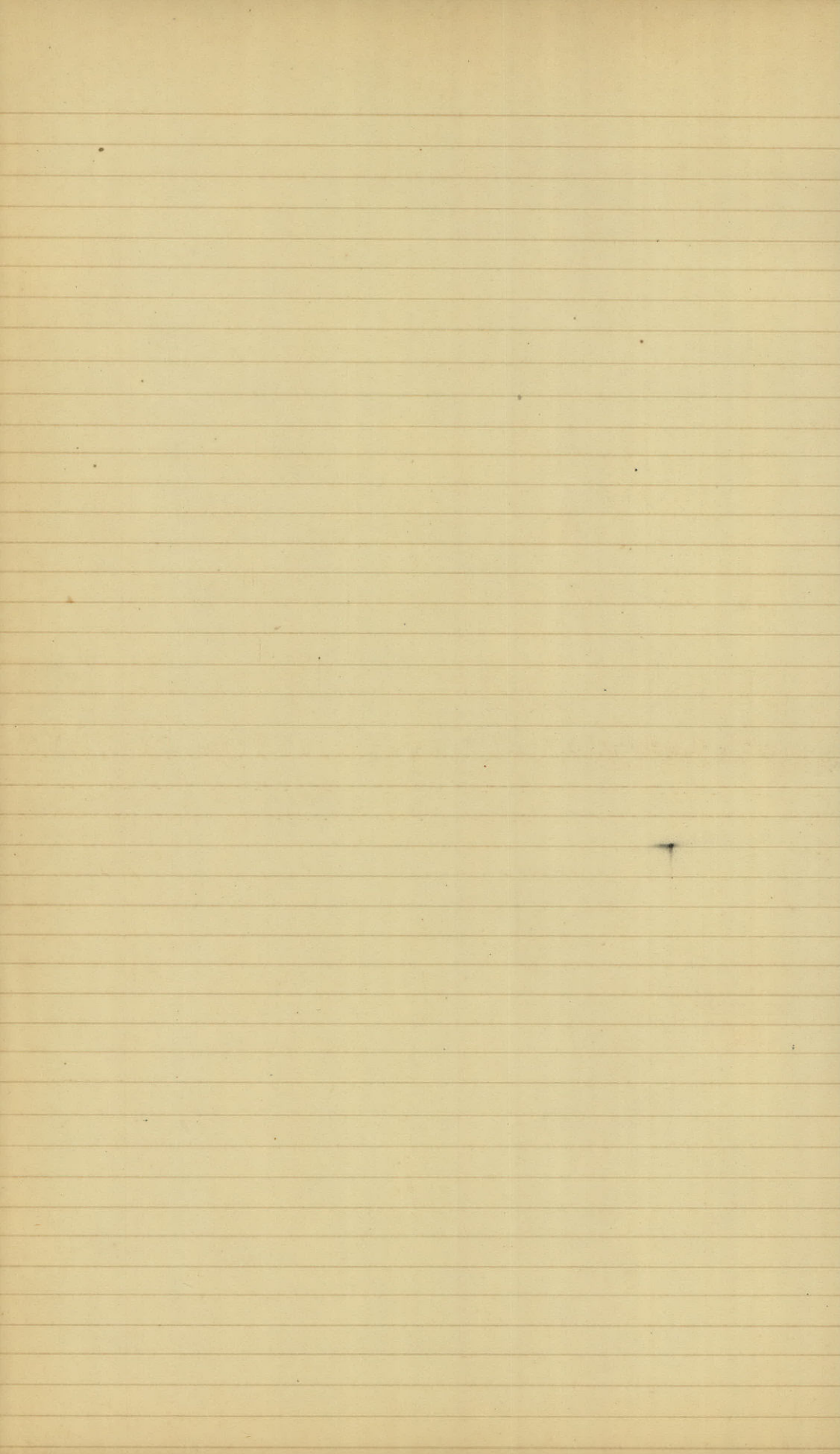
struction across such highway, or in any manner prevent the free use of the same by the public, except when expressly authorized by law. (C. C. P., 112.)

ART. 125. Obstructions removed on Order of County Judge.—After indictment or information presented against any person for violating the preceding article, any one, in behalf of the public, may apply to the county judge of the county in which such highway is situated, and upon hearing proof, such judge, either in term time or in vacation, may issue his written order to the sheriff or other proper officer of the county, directing him to remove the obstruction; but before the issuance of such order the applicant therefor shall give bond with security in an amount to be fixed by the judge, to indemnify the accused, in case of his acquittal, for the loss he sustains. Such bond shall be approved by the county judge and filed among the papers in the cause. (C. C. P., 113.)

ART. 126. Suit upon Bond of Persons applying for Removal.—If the defendant, in such indictment or information, be acquitted after a trial upon the merits of the case, he may maintain a civil action against the applicant, and his sureties upon such bond, and may recover the full amount of the bond or such damages, less than the full amount thereof, as may be assessed by the jury: *Provided*, he shows on the trial that the place 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 or in his lawful possession. (C. C. P., 114.)

ART. 127. Defects of Form in establishing Highway do not vitiate.—No mere defect of form shall vitiate any order or proceeding of the commissioners' court in establishing a highway. (C. C. P., 115.)

ART. 128. Removal of Obstruction on Conviction of Defendant.—Upon the conviction of a defendant for obstructing the free use of any public highway, if such obstruction still exists, the court shall order the sheriff or other proper officer to forthwith remove the same at the costs of the defendant, which costs shall be taxed and collected as other costs in the case.



PROVISIONS

OF THE

SESSION LAWS OF TEXAS,

(Passed since the Revision of 1879.)

RELATING TO

RAILROADS.

PROVISIONS

OF THE

SESSION LAWS OF TEXAS,

(Passed since the Revision of 1879,)

RELATING TO

RAILROADS.

LIENS OF MECHANICS AND LABORERS.

CHAPTER XII.—An act to protect mechanics, laborers and operatives on railroads against the failure of owners, contractors and sub-contractors, or agents, to pay their wages when due, and provide a lien for such wages.

SECTION

1. Mechanics, laborers and operatives to have a first lien upon railroads.
2. Suit and judgment upon such lien—Intervenors.

SECTION

3. Venue of such action.
4. Lien must be enforced within one year.
5. Emergency clause.
6. Repealing clause.

SECTION 1. Mechanics, Laborers and Operatives to have a first Lien upon Railroads.—*Be it enacted by the Legislature of the State of Texas,* That all mechanics, laborers and operatives who

may have performed labor in the construction or repair of any railroad, locomotive, car or other equipment to a railroad, or who may have performed labor in the operating of a railroad, and to whom wages are due or owing, shall hereafter have a lien prior to all others upon such railroad and its equipments for such wages as are unpaid.

SEC. 2. Suit and Judgment upon such Lien—Intervenors.—In all suits for wages due by a railroad company for such labor as heretofore mentioned, upon proof being satisfactorily made that such labor had been performed, either at the instance of said company, a contractor or sub-contractor, or agent of said company, and that such wages are due, and the lien given by this act is sought to be enforced, it shall be the duty of the court having jurisdiction to try the same, to render judgment for the amount of wages found to be due, and to adjudge and order said railroad and equipments, or so much thereof as may be necessary, to be sold to satisfy said judgment. In all suits of this kind it shall not be necessary for the plaintiff to make other lien holders defendants thereto, but such lien holders may intervene and become parties thereto, and have their respective rights adjusted and determined by the court.

SEC. 3. Venue of such Action.—Suits by mechanics, laborers and operatives, for their wages due by railroad companies, may be instituted and prosecuted in any county in this State where such labor was performed, or in which the cause of action or part thereof accrued, or in the county in which the principal office of such railroad company is situated, and in all such suits service of process may be made in the manner now required by law.

SEC. 4. Lien must be enforced within one Year.—The lien created by this act shall cease to be operative in twelve months after the creation of the lien, if no steps be sooner taken to enforce it.

SEC. 5. Emergency Clause.—It being important that the benefits of this act be realized at once, because the parties to be benefited by this act have no adequate protection under existing law, creates such imperative public necessity and an emergency as requires that it be of force and effect upon its passage, and it is so enacted.

SEC. 6. Repealing Clause.—That all laws and parts of laws in conflict with the provisions of this act be and the same are hereby repealed. Approved, February 18, 1879. [Laws 1879, Regular Session, p. 8.] Takes effect from and after its passage. (a)

(a) The lien given to mechanics and workmen by this act was intended to apply only to labor done or materials furnished after its passage. *Central, etc., R. Co. vs. Henning*, 52 Tex. 466. Prior to this act, neither under the constitution nor the statute law, was a mechanic's lien given on a

COUNTIES AUTHORIZED TO PROVIDE SUBSTITUTES FOR THEIR OUTSTANDING BONDS.

CHAPTER XLVI.—An act to authorize counties to take up their outstanding bonds and to issue others in lieu thereof, and to provide by special tax for the payment of interest and principal of the same.

SECTION

1. Commissioners' court authorized to take up certain bonds.

SECTION

2. Sinking fund and payment of interest provided for.

SECTION 1. Commissioners' Court authorized to take up Certain Bonds.—*Be it enacted by the Legislature of the State of Texas,* That any county of this State that may have heretofore issued bonds under any special law for the purpose of erecting court-houses and jails, and funding other outstanding indebtedness existing prior to the adoption of the present Constitution, and the same are still outstanding and unpaid, the commissioners' court thereof shall have power, with the consent of the holders of said bonds, to take up and destroy the same, and issue therefor other bonds with interest and principal payable at such times and places as may be agreed upon by the commissioners' court and the holders of a majority of the bonds: *Provided,* That all bonds issued under this act shall be redeemable at the option of the county at any time after two years from their issuance, and shall not bear a higher rate of interest than the county is now paying, or required by existing laws to pay.

SEC. 2. Sinking Fund and Payment of Interest provided for.—The commissioners' courts of the counties that may issue bonds under this act, shall levy and cause to be collected an annual special *ad valorem* tax of twenty-five cents on the one hundred dollars worth of property in their respective counties, to pay the interest and provide a sinking fund for the payment of its bonds. Approved March 22, 1879. [Laws 1879, Regular Session, p. 43.] Takes effect ninety days after adjournment.

railroad, including its road-bed and franchise, for work and labor done and materials furnished. The act of August 7, 1876, so far from showing a legislative intent to subject railroads to mechanics' liens, contains provisions to the contrary. (R. S., arts. 3169, 3171.) *Tyler Tap R. Co. vs. Driscoll*, 52 Tex., 13. Section 35 of art. 16 of the Constitution of 1876, did not give to laborers on railroads a lien on the property of the company on which they labored, as was provided by art. 37 to mechanics, artisans and material men. *Central, etc., R. Co. vs. Henning*, 52 Tex., 466.

COUNTIES, CITIES AND TOWNS AUTHORIZED TO SCALE AND FUND DEBTS.

CHAPTER LIV. An act to authorize counties, cities and towns to scale and fund their indebtedness,
and for raising means to pay the same.

SECTION

1. Maximum rate of interest on new bonds—No debts prior to April 18, 1876, to be funded.
2. Scaling of debts, bonded or otherwise authorized.

SECTION

3. Sinking fund of two per cent per annum.
4. Emergency clause.

SECTION 1. Maximum Rate of Interest on New Bonds—No Debt prior to April 18, 1876, to be funded.—*Be it enacted by the Legislature of Texas,* That all counties, incorporated cities and towns in this State owing debts, are hereby authorized to fund the same in bonds of said counties, cities and towns, in such sums and at such rate of interest as may seem best to the authorities of said counties, cities and towns: *Provided,* That in no case shall the rate of interest be greater than six per cent. per annum: *And, provided further,* That this act shall not apply to any indebtedness of any counties, cities or towns made and undertaken since the eighteenth day of April, 1876: *Provided further,* That no city shall issue bonds to a greater amount than is authorized by its charter, where a limit is placed on the issue of bonds in its charter.

SEC. 2. Scaling of Debts, bonded or otherwise, authorized.—All the counties, incorporated cities and towns of this State, are hereby authorized to scale their debts of every description, bonded or otherwise, by adjustment and compromise with their creditors, and may issue bonds as provided for in section one of this act, in any sums and at any rate of interest not greater than six per cent. per annum, in settlement or compromise with their said creditors, or with any one or more of them.

SEC. 3. Sinking Fund of two per cent. per Annum.—Said counties, cities and towns, in funding and scaling their said indebtedness, made and undertaken before said eighteenth day of April, 1876, as herein provided, shall provide a suitable sinking fund of two per cent. per annum, to be applied to the payment of the principal of the bonds issued under this act; and shall annually levy and collect a sufficient tax on all the taxable property of said counties, cities and towns to pay the interest and sinking fund aforesaid: *Provided,* That should there be annually collected more than is necessary to pay the interest already due and the two per cent. sinking fund such excess

and sinking fund, may be used in the purchase and cancellation of the bonds for which said sinking fund is set aside.

SEC. 4. Emergency Clause.—Whereas, many counties, cities and towns in this State are suffering under heavy indebtedness, which might be satisfactorily compromised and reduced, an imperative public necessity exists for the immediate passage of this act, and an emergency existing that it immediately take effect, it is enacted that this act take effect and be in force from and after its passage. Approved March 25, A. D. 1879. [Laws, 1879, Regular Session, p. 61.] Takes effect from and after its passage.

TRAINS TO STOP AT STATE LINE.

CHAPTER XCV. An act requiring railroad companies to stop their trains at the boundary lines of the State of Texas for a certain length of time.

SECTION 1. Penalty for failure to stop train thirty minutes.	SECTION 2. Emergency clause.
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SECTION 1. Penalty for Failure to Stop Train Thirty Minutes.—*Be it enacted by the Legislature of the State of Texas,* That any railroad or railway company in this State, whose line of road does now or may hereafter terminate at the boundary line of this State, shall stop its trains at least thirty minutes at said line, or at their depot established thereat: *Provided,* Said company have a depot within three hundred yards of said line; and any railroad or railway company, its conductors, engineers, or agents in charge of any such train failing or refusing to comply with the provisions of this act, shall be fined in a sum not less than fifty dollars, nor more than two hundred dollars for every such violation, one-half of said fine to be paid to the informer and the other half to be paid into the county treasury.
(a)

SEC. 2. Emergency Clause.—Whereas, the evils which it is the design of this act to remedy are of a character so serious as to cre-

(a) In Galveston, etc., R. Co., vs. Le Gierse, 51 Tex., 189, the Supreme Court refused to hold unconstitutional an act requiring the conductors of passenger trains to stop not less than five minutes at each station (Paschal's Dig. art. 6532), unless it should plainly appear that the vested, charter or other important rights of the railroad company were unduly prejudiced thereby.

ate an emergency and imperative public necessity for this act to take effect and go into force from and after its passage, therefore, it is so enacted. Approved April 18, A. D. 1879. [Laws 1879, Regular Session, p. 103.] Takes effect ninety days after adjournment.

COUNTIES, CITIES AND TOWNS AUTHORIZED TO COMPROMISE DEBTS.

CHAPTER CV.—An act to authorize any county, city or town in this State to compromise existing bonded indebtedness, and to issue new bonds to be sold or exchanged for this purpose, and to provide for the efficient collection of taxes to pay the principal and interest of such new bonds.

SECTION

1. County commissioners' court or mayor and aldermen may issue new bonds in compromise.
2. Certain debts not to be compromised—Maximum rate of compromise.
3. New bonds exempt from county and city taxes.
4. New bonds how prepared and executed.
5. Sale of new bonds or exchange for old, authorized.

SECTION

6. Certain laws concerning old bonds to remain in force.
7. Payments upon the new bonds to be aided by same laws as applicable to State.
8. Additional provision to this effect.
9. Ratification of compromise by tax-payers.
10. This act repeals other acts, how far.
11. Emergency clause.

WHEREAS, In some of the counties, cities and towns in this State there is an existing bonded indebtedness against the same, necessitating the collection of an overdue tax upon the people to pay the interest and provide a sinking fund, as required by law for the ultimate extinguishment of said indebtedness; and,

WHEREAS, It is believed a satisfactory adjustment, settlement and compromise of much of said indebtedness could be effected between said counties, cities and towns, and the holders of such indebtedness, if duly authorized by law, by which such indebtedness would be greatly reduced, and the taxation necessary to meet the same greatly lessened in amount; and,

WHEREAS, The accomplishment of this adjustment, settlement and compromise, is a great public necessity, which requires the rules to be suspended that this act may become a law at the present session of the Legislature, and that it take effect and be in force from and after its passage; therefore,

SECTION 1. County Commissioners' Court or Mayor and Aldermen may issue New Bonds in Compromise.—*Be it en-*

acted by the Legislature of the State of Texas, That the county commissioners' court of any county, or the mayor and board of aldermen of any city or town in this State, are hereby authorized and empowered to compromise and fund any existing bonded indebtedness by such county, city or town issued, and the coupons due thereon, to aid in the construction of railroads or other works of internal improvement, or other bonds issued by authority of law; and for this purpose they are hereby authorized and empowered to issue new bonds in denomination of not less than fifty nor more than one hundred dollars, in their discretion, with interest coupons payable annually at the office of the State Treasurer; said new bonds to become due and payable in twenty years, and to bear such rate of interest, not exceeding eight per cent. per annum, as in their discretion may best subserve the purpose intended by this act.

SEC. 2. Certain Debts not to be Compromised.—No compromise shall be made under the provisions of this act, by which any debt now barred by the statute of limitation, or which may be barred at the time of such compromise, shall be received, nor shall such new bonds, to be used in funding the principal of such old bonds, be issued for any greater amount than three-fourths of the principal of the old bonds outstanding: *Provided*, That when the rate of interest of such new bonds is not more than five per cent. per annum, then new bonds may be issued to the full amount of the old bonds outstanding: *And provided further*, that the amount of new bonds to be issued for the funding of the matured interest shall be left to the discretion of the county commissioners' court or the mayor and board of aldermen, as the case may be, but in no case to exceed the amount of such matured interest.

SEC. 3. New Bonds Exempt from County and City Taxes.—The new bonds then issued by any county shall be exempt from the payment of all county taxes, general and special, in the county by which they are issued; and the new bonds then issued by any city or town shall be exempt from the payment of all taxes levied by such city or town.

SEC. 4. New Bonds, how prepared and executed.—That the county commissioners' court or mayor or board of aldermen, as the case may be, shall cause to be prepared the necessary blank bonds to give effect to the provisions of this act, the cost of which shall be paid out of the treasury of such county, city or town; said bonds, when issued by any county, shall be signed by the county judge and attested by the county clerk of such county, with the seal of the county court affixed; and when issued by any city or town, shall be signed by the

mayor and attested by the recorder (or secretary, if there be no recorder), with the seal of such city or town affixed; and such new bonds, whether issued by any county, city or town, shall be registered in the office of the State Comptroller.

SEC. 5. Sale of New Bonds or Exchange for Old authorized.—Such new bonds may be exchanged for the old bonds at the rate specified in the second section of this act, or they may be sold and the proceeds applied to the purchase of such old bonds at the rate specified in said second section: *Provided*, that no delivery of such new bonds shall take place unless a contract has already been entered into for the purchase of a corresponding amount of such old bonds: *And, provided further*, no bonds issued under this act shall be sold at less than par, each bond sold shall be made to bear the lowest rate of interest that will give it a par value.

SEC. 6. Certain Laws concerning Old Bonds to remain in Force.—That all laws now in force, providing for the collection of taxes for the payment of the principal and interest of such existing bonds, shall apply and be in force for the collection of taxes for the payment of the principal and interest of such new bonds: *Provided*, that the sinking fund may be used in the purchase and cancellation of such new bonds whenever the same can be bought at not more than their par value.

SEC. 7. Payments upon the New Bonds to be aided, how.—The object and intention of this act being to enable the counties, cities or towns in this State which have granted subsidy bonds to railroads or other works of internal improvement, or created any bonded indebtedness whatever to compromise the same, and thereby reduce the burden of taxation, it is hereby declared as an inducement to the holders of said bonds to accept the compromise, that whenever such compromise shall be entered into and accepted in good faith, either by the holder of the present bonds, or by any person purchasing said new bonds as provided in this act; that all laws now in force or which may hereafter be in force for the assessment and collection of the State taxes, shall also be in force and apply to the assessment and collection of the taxes levied to meet the interest and sinking fund of said new bonds; and in any suits which may hereafter be instituted to enforce the payment of said new bonds or coupons, against any such county, city or town, no defense, either in law or equity, shall be admitted in any of the courts in this State, except such as originated upon or subsequent to the issuance of such new bonds.

SEC. 8. Additional Provision to this Effect.—Whenever a collector of taxes shall neglect or refuse to collect the taxes levied for

the payment of the interest and sinking fund of such new bonds, he shall be liable on his official bond, at the suit of any person or persons holding any of said bonds or coupons, for all such damages as said person or persons shall have sustained by reason of his neglect or refusal ; nor shall such collector or his sureties be relieved of such liability by his resignation of the office ; and whenever any person who may be elected collector of taxes of any county, city or town, shall fail, neglect or refuse to give the bond required by law for the collection of such tax, or whenever the commissioners' court or the mayor and board of aldermen, as the case may be, shall appoint any person who shall fail, neglect or refuse to give said bond, or whenever they shall fail, neglect or refuse to appoint some person who will give said bond and collect said tax, then it is hereby made the duty of the Governor to appoint some suitable person to collect said taxes, who shall perform all the duties required by this act or any other law of this State relating to the collection of said taxes from the time of his said appointment until the next general election.

SEC. 9. Ratification of Compromise by Tax-payers.—No compromise which may be agreed upon between the commissioners' court or the mayor and board of aldermen, as the case may be, and the bondholders or others, shall be binding upon the tax-payers of any county, city or town, until the terms of said compromise shall have been submitted to a vote of the property tax payers at an election held by order of the commissioners' court, or mayor and board of aldermen, as the case may be, and a majority of the said tax-payers shall vote in favor of and ratify the terms of said compromise ; said election shall be held in accordance with the general law regulating elections : *Provided*, that none but property tax-payers shall vote at any such election : *Provided, further*, that notice of such election shall be published for thirty days in some newspaper published in the county, city or town, as the case may be ; and in case there shall be no paper published in such county, city or town, then by posting in ten public places in such county, city or town, as the case may be, for thirty days prior to any election under this act.

SEC. 10. This Act repeals other Acts, how far.—That this act shall not be construed to repeal an act entitled "An act to authorize counties, cities and towns to scale and fund their indebtedness, and for raising means to pay the same," approved March 26, A. D. 1879, except in so far as said act may apply to bonds issued under an act entitled "An act to authorize counties, cities and towns to aid in the construction of railroads and other works of internal improvement," approved April 12, 1871, and to that extent it is hereby repealed.

SEC. 11. Emergency Clause.—That this act take effect and be in force from and after its passage. Approved April 18, A. D. 1879, [Laws, 1879, Regular Session, p. 109.] Takes effect ninety days after adjournment.

TAXES LEVIED TO PAY RAILROAD SUBSIDIES.

CHAPTER CXLVI.—An act to compel collectors of taxes in counties wherein subsidies have been granted to railroads or other works of internal improvements, to receive the State and county taxes from persons who refuse to pay the tax levied for such purpose.

SECTION

1. Tax-payer may refuse to pay railroad subsidy tax—Collector bound to receive balance of tax bill.

SECTION

2. Collector liable in damages for refusal to receive balance of tax bill.
3. Remedy for collection of subsidy taxes unimpaired—Emergency clause.

WHEREAS, In a number of counties in this State money subsidies have been granted to railroads or other works of internal improvement; and

WHEREAS, The people in such counties, in many instances, are refusing to pay the tax levied for the payment of such subsidies, and are disputing the validity of the same; and

WHEREAS, The collectors of taxes of several of such counties are refusing to receive the tax levied for State and county purposes, without the payment at the same time of such subsidy tax, and are thereby greatly delaying and obstructing the collection of State and county revenues, therefore there exists a public imperative necessity and emergency for the suspension of the rule which requires this bill to be read on three several days in each house; therefore,

SECTION 1. Tax-payer may refuse to pay Railroad Subsidy Tax—Collector bound to receive Balance of Tax Bill.
Be it enacted by the Legislature of the State of Texas, That collectors of taxes for such counties wherein taxes have been levied for the payment of subsidies granted to railroads or other works of internal improvement, and who may be vested with authority to collect such subsidy tax, are hereby authorized and required to receive the State and county taxes, where the same are tendered for payment, and receipt therefor, except the said subsidy tax, and shall not refuse to receive and receipt for such State and county taxes on account of any refusal or failure of the tax-payer to pay such subsidy tax.

SEC. 2. Collector Liable in Damages for Refusal to receive Balance of Tax Bill.—Any tax collector who shall violate the provisions of this act shall be liable on his official bond for such damages as may result to any one by reason of such violation.

SEC. 3. Remedy for Collection of Subsidy Taxes unimpaired.—Emergency Clause.—That it shall be lawful for said collectors to proceed to collect the county and State taxes in such manner as the law provides without at the same time proceeding to collect subsidy taxes: *Provided*, this law shall not be so construed as to destroy any present remedy for the collection of subsidy taxes. That an imperative public necessity exists for authorizing collectors of taxes to proceed in accordance with this act as such collectors in several counties as are described in section one are now engaged in the collection of taxes, therefore this act shall take effect and be in force from and after its passage.

Approved April 24, A. D. 1879. [Laws 1879, Regular Session, p. 160.] Takes effect ninety days after adjournment.

SURRENDER OF RIGHTS TO THE PUBLIC DOMAIN.

CHAPTER CLV.—An act to authorize and allow railroad companies to surrender their rights to reservations of the public domain.

SECTION

1. Surrender a substitute for judicial forfeiture.

SECTION

2. Emergency clause.

SECTION 1. Surrender a Substitute for Judicial Forfeiture.—*Be it enacted by the Legislature of the State of Texas*, That any railroad company in whose favor a reservation from the public domain of the State may heretofore have been created by any law of the State, general or special, may surrender its exclusive right to further locate lands within said reservation; and whenever any such railroad company shall file in the office of the Secretary of State, within ninety days from the passage of this act, an instrument in writing, to be approved as to form by the attorney general, relinquishing or surrendering its claim to any such reservation as aforesaid, said relinquishment or surrender shall, upon the payment of all the costs of suit, if any has been instituted, be accepted by the State, instead of a judicial forfeiture of such company's claim to such reservation; such relinquishment or surrender shall be deemed and held a satisfaction and settlement of

said suit; and it is hereby specially provided that the lands that may be relinquished under the provisions of this act shall be subject to location only under the provisions of the act reserving from location lands forfeited to the State, approved August 17, 1876: *Provided*, that nothing herein contained shall be so construed as to prevent any railroad company which may make any such surrender or relinquishment, as hereinbefore provided for, from thereafter proceeding with the construction of its road in accordance with the requirements of its charter; and all the laws of this State regulating such railroads, and acquiring from the State so much land per mile of constructed road, as all other railroad companies can or may acquire for constructing railroads under the general laws then in force, not to exceed sixteen sections of land per mile; and any action taken by any railroad company, under the provisions of this act, shall be considered and held to be a complete acceptance of all the provisions of the constitution applicable to railroads and of the laws of this State regulating railroads.

SEC. 2. Emergency Clause.—The near approach of the close of the session creates an imperative public necessity that the rule requiring this act to be read on three several days be suspended, and it is hereby so suspended.

Approved April 29, A. D. 1879. [Laws 1879, Regular Session, p. 175.] Takes effect ninety days after adjournment.

QUO WARRANTO PROCEEDINGS.

CHAPTER XLVIII.—An act to prescribe the remedy and regulate the proceedings by *quo warranto*, and confer the jurisdiction in certain cases upon the district court of Travis county.

SECTION

1. Information on extortionate charge for transportation—For refusal to draw cars of other road.
2. Rights of divers parties determined on information.
3. Form of citation.
4. Rights of defendant same as in civil causes—Appeals.

SECTION

5. Judgment of ouster and fine for usurpation of franchise.
6. Remedy under this act cumulative.
7. Jurisdiction of district court of Travis county.
8. Emergency clause.

SECTION 1. Information on Extortionate Charge for Transportation—For Refusal to draw Cars of other Road.
Be it enacted by the Legislature of the State of Texas, That in case any person shall usurp, intrude into, or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes

any office or franchise, or any office in any corporation created by authority of this State, or any public officer shall have done or suffered any act which, by the provisions of law, works a forfeiture of his office, or any association or number of persons shall act within this State as a corporation without being legally incorporated, or any incorporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as a corporation, or exercises powers not conferred by law, or if any railroad company doing business in this State shall charge an extortionate rate for the transportation of any freight or passengers, or refuse to draw or carry the cars of any other railroad company over its line as required by the laws of this State, the Attorney-General, or district or county attorney, of the proper county or district, either of his own accord or at the instance of any individual relator, may present a petition to the district court of the proper county, or any judge thereof, in vacation, for leave to file an information in the nature of a *quo warranto*, in the name of the State of Texas; and if such court or judge shall be satisfied that there is probable ground for the proceeding, the court or judge may grant the petition and order the information to be filed and process to issue.

SEC. 2. Rights of Divers Parties determined on Information.—When it appears to the court or judge that the several rights of divers parties to the same office or franchise may properly be determined on one information, the court or judge may give leave to join all such persons in the same information in order to try their respective rights to such office or franchise.

SEC. 3. Form of Citation.—When the information is filed, as hereinbefore provided, the clerk shall issue citation in like form as in civil suits commanding the defendant to appear at the return time [term] of said court to answer the relator in an information in the nature of a *quo warranto*. If the information is filed in vacation, the citation shall be returnable on the first day of the next succeeding term; if in term time, it may be made returnable on any day of the same term, not less than five days after the date of the writ, as shall be directed by the court.

SEC. 4. Rights of Defendant same as in Civil Causes—Appeals.—Every person or corporation who shall be cited as hereinbefore provided, shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in cases of trial of civil causes in this State; and in case of appeal to the Supreme Court, to which either party shall be entitled, the said court shall give preference to such case and hear and determine the same at the earliest day practicable; and all such appeals shall be prosecuted to the term

of the court in session, at either branch, or the first term to be held, if not in session, after judgment has been rendered in the district court.

SEC. 5. Judgment of Ouster and Fine for Usurpation of Franchise.—In case any person or corporation against whom any such [information] is filed, shall be adjudged guilty, as charged in the information, the court shall give judgment of ouster against such person or corporation from the office or franchise, and may fine such person or corporation for usurping, intruding into or unlawfully holding and executing such office or franchise, and shall also give judgment in favor of the relator for the costs of the prosecution.

SEC. 6. Remedy under this Act Cumulative.—The remedy and mode of procedure hereby prescribed shall be construed to be cumulative of any now existing.

SEC. 7. Jurisdiction of District Court of Travis County. Suits against persons illegally claiming or holding any State office or appointment, as contra-distinguished to a county or district office, shall be brought in the district court of Travis county.

SEC. 8. Emergency Clause.—Whereas, this session of the Legislature must adjourn in less than three days from this date, therefore there exists an imperative public necessity for the passage of this act to supply a defect now existing in the laws of this State; it is therefore enacted that the constitutional rule requiring bills to be read on three several days be suspended. Approved July 9, A. D. 1879. [Laws, 1879, Special Session, p, 43.] Takes effect ninety days after adjournment.

COUNTIES AUTHORIZED TO FUND BONDED INDEBTEDNESS.

CHAPTER CIV.—An act to authorize counties to fund their bonded indebtedness, and to provide means to pay the same.

SECTION	SECTION
1. County commissioners' court to issue new bonds and levy tax to pay interest and principal.	6. Duty of collector of taxes.
2. These taxes to be used for no other purpose.	7. New bonds to be sold at what rate.
3. These taxes how collected.	8. Expenses under this act how paid.
4. Bond of collecting officer.	9. Laws aiding collection of taxes to remain in force.
5. Collections paid out on warrant of county judge.	10. Repealing clause.
	11. Emergency clause.

SECTION 1. County Commissioners' Court to issue New Bonds and levy Tax to pay Interest and Principal.—*Be it enacted by the Legislature of the State of Texas, That the county*

commissioners' court of any county in this State is hereby authorized and empowered to fund any existing bonded indebtedness and coupons due thereon, made and undertaken by such county by authority of law prior to the eighteenth day of April, A. D. 1876, and for this purpose the said commissioners' courts are hereby authorized and empowered to issue new bonds in denominations of not less than five hundred dollars, with interest coupons payable semi-annually; said new bonds to become due and payable twenty years from the date of their issuance, and to bear interest not exceeding six per cent. per annum, and the said commissioners' courts are further authorized and empowered to levy a tax upon all real and personal property situated in the county, not to exceed fifty cents on the hundred dollars on the assessed value of such property, in any one year, to pay the annual interest, and not less than two per cent. annually of the principal of said bonds, besides the expenses of assessing and collecting the same; and no bonds shall be issued under this act until a levy, as herein provided, shall have been made, and when said levy shall have been so made the same shall continue in force until the whole amount of the principal and interest of said bonds shall have been fully paid.

SEC. 2. These Taxes to be used for no other Purpose.—All taxes levied under this act shall be applied solely to the objects for which they were levied, as follows: First—to the payment of the expenses of assessing and collecting the same; second—to the payment of the annual interest of such bonds, and not less than two per cent. of the principal; and if there be any excess on hand, after making the above payments for the current year, it shall be used in the purchase and cancellation of said bonds.

SEC. 3. These Taxes how collected.—All taxes levied under this act shall be assessed and collected by the same officers, whose duty it is to assess and collect the State tax, and they shall receive for their services one-fourth the rates of commission allowed for assessing and collecting the State tax. The said tax shall be assessed and collected in the same manner as the State tax, and the same remedies shall be used to enforce its collection that are provided by law to enforce the collection of the State tax: *Provided*, That all such taxes shall be assessed and collected separately from that levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor.

SEC. 4. Bond of Collecting Officer.—The officer whose duty it is to collect the taxes levied under this act, shall give a bond, with two or more sufficient sureties, to be approved by the county commissioners' court, in a sum to be equal to double the estimated annual amount

of said tax, which bond shall be payable to the county and shall be conditioned for the faithful collection and payment of said tax into the county treasury.

SEC. 5. Collections paid out on Warrant of County Judge.—It shall be the duty of the county treasurer to receive all moneys collected under this act, and to keep separate accounts thereof, and to pay out the same on warrants drawn by the county judge in the usual legal form.

SEC. 6. Duty of Collector of Taxes.—The collector of the taxes levied under this act shall pay over to the county treasurer, at the beginning of each and every month, all moneys he may have collected during the next preceding month, deducting his legal commissions on the amount so paid, and he shall, at each regular meeting of the county commissioners' court, make a report of his collections and payments to the county treasurer since the next preceding term.

SEC. 7. New Bonds to be sold at what Rate.—Said bonds shall not be sold or exchanged for existing bonds by any county for less than par value and accrued interest.

SEC. 8. Expenses under this Act how paid.—All expenses necessary to give effect to the provisions of this act shall be paid out of the treasury of the county; and all bonds issued by any county, under this act, shall be signed by the county judge and attested by the clerk of the commissioners' court, with the seal of said court affixed thereto.

SEC. 9. Laws aiding Collection of Taxes to remain in Force.—All laws now in force providing for the levy and collection of taxes for the payment of the principal and interest of any existing bonds, which may be fundable under this act, shall apply and be in force for the levy and collections of taxes for the payment of the principal and interest of all bonds that may be issued under the provisions of this act.

SEC. 10. Repealing Clause.—That all laws and parts of laws in conflict with the provisions of this act be and the same are hereby repealed.

SEC. 11. Emergency Clause.—Whereas, many counties in this State have debts and bonds falling due; and, whereas, the session is fast drawing to a close; therefore, an imperative public necessity and an emergency exist that the constitutional rule requiring bills to be read on three several days be suspended, and that this act take effect at once, and it is so enacted. Approved April 6, A. D. 1881. [Laws, 1881, Regular Session, p. 117.] Takes effect from passage.

GRANTS OF LANDS AND LAND CERTIFICATES REVOKED.

CHAPTER VI. An act to repeal all laws granting lands or land certificates to any person, firm, corporation or company for the construction of railroads, canals and ditches.

SECTION

1. Laws making grants repealed.

SECTION

2. Emergency clause.

SECTION 1. **Laws Making Grants repealed.**—*Be it enacted by the Legislature of the State of Texas,* That all laws or parts of laws now in force granting lands or land certificates to any person, firm, corporation or company for the construction of railroads, canals and ditches, be and the same are hereby repealed.

SEC. 2. **Emergency Clause.**—The fact that the public domain subject to location by the owners of these certificates has been exhausted creates an imperative public necessity and an emergency requiring the constitutional rule that bills be read on three several days in each house be suspended, and the same is therefore suspended; and that this act take effect and be in force from and after its passage, and it is so enacted. Approved April 22, A. D. 1882. [Laws, 1882, Called Session, p. 3.] Takes effect from passage.

EXCESSIVE CHARGES PROHIBITED.

CHAPTER XXVI.—An act to prohibit railroad companies, their officers, agents and employes from making excessive charges for carrying and transporting freight, goods, wares and merchandise, and to require said companies, their officers, agents and employes, to deliver freight, goods, wares and merchandise, on the payment of the freight charges due as shown by the bill of lading, and to provide penalties for the violation of this act.

SECTION

1. Charges in excess of bill of lading unlawful.
2. Goods delivered upon payment of charges in bill of lading.

SECTION

3. Damages for refusal to deliver.

SECTION 1. **Charges in Excess of Bill of Lading are Unlawful.**—*Be it enacted by the Legislature of the State of Texas,* That it shall be unlawful for any railroad company in this State, its officers, agents and employes, to charge and collect, or to endeavor to charge and

collect, from the owner, agent or consignee of any freight, goods, wares and merchandise, of any kind or character whatever, a greater sum for transporting said freight, goods, wares and merchandise than is specified in the bill of lading.

SEC. 2. Goods delivered upon Payment of Charges in Bill of Lading.—That any railroad company, its officers, agents or employes having possession of any goods, wares and merchandise, of any kind or character whatever, shall deliver the same to the owner, his agent or consignee, upon payment of the freight charges as shown by the bill of lading.

SEC. 3. Damages for Refusal to Deliver.—That any railroad company, its officers, agents or employes that shall refuse to deliver to the owner, agent or consignee, any freight, goods, wares and merchandise, of any kind or character whatever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares or merchandise, to an amount equal to the amount of the freight charges for every day said freight, goods, wares and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading, to be recovered in any court of competent jurisdiction. Approved May 6, A. D. 1882. [Laws, 1882, Called Session, p. 35.] Takes effect ninety days after adjournment.

PUBLIC SCHOOL LANDS.

CHAPTER VII.—An act concerning public lands heretofore surveyed by railroads, or corporations, or any company or person, for the benefit of public free schools of this State.

SECTION 1. Lands surveyed as such belong to public free schools.	SECTION 3. Emergency clause.
2. Repealing clause.	

SECTION 1. Lands surveyed as such belong to Public Free Schools.—*Be it enacted by the Legislature of the State of Texas,* That any and all public lands heretofore surveyed by railroads or corporations, or any company or any person in this State, for the benefit of the public free schools of this State, by virtue of any certificate, valid or invalid, void or voidable, be and the same are hereby declared to be lands belonging to the public free schools of this State.

SEC. 2. Repealing Clause.—All laws and parts of laws in conflict with this act be and the same are hereby repealed.

SEC. 3. Emergency Clause.—Whereas, the protection of the interest of the public free schools creates an imperative public necessity for the suspension of the constitutional rule which requires that all bills be read on three several days, said rule is therefore suspended, and an emergency exists that this act should take effect from and after its passage, and it is so enacted. Approved at 2 o'clock p. m., February 3, 1883. [Laws, 1883, Regular Session, p. 4.] Takes effect from and after its passage.

REGULATION OF RAILROADS—STATE ENGINEER—DISCRIMINATION PROHIBITED.

CHAPTER LXX.—An act to further provide for the regulation of railroad and transportation lines in the State of Texas, and to provide for the creation of the office of, and appointment of a State Engineer and his secretary, and their salaries and duties; to prevent unjust discrimination and extortion in the rates charged for transportation of freight and passengers in this State, and to provide a mode of procedure in relation thereto.

SECTION

1. State engineer.
2. Continued—Salary—Traveling Expenses—May accept pass.
3. Continued—Office and expenses—Engineer's secretary—Vouchers for expenses.
4. Continued—Oath of.
5. Continued—Duties of—Report to Attorney-General.
6. Continued—Report to Governor—Schedule of maximum rates for Nineteenth Legislature.
7. Uniform rates of transportation—Discrimination punished—Schedule of rates to be posted—Notice of change of rates—Station agent guilty of misdemeanor for failure to keep schedule posted.

SECTION

8. Goods forwarded in order of receipt—Notice to consignee of arrival of freight—Afterwards, company liable as warehousemen.
9. Maximum passenger fare—Allowance of baggage—Fare paid to conductor—Children under ten years.
10. Duties of Attorney-General—Notice to company of violation of law by its agents—Action by aggrieved party.
11. Emergency clause.

SECTION 1. State Engineer.—*Be it enacted by the Legislature of the State of Texas,* That the Governor shall appoint, by and with the advice and consent of the Senate, an engineer, experienced in the construction and maintenance of railways, who shall be State Engineer, who shall hold his office for two years, or until his successor is qualified, but shall be subject to removal by the Governor at any time. In case of removal, the Governor may appoint a successor until the meeting of the next Legislature, when said appointment shall be submitted to the Senate for approval.

SEC. 2. Continued—Salary—Traveling Expenses—May Accept Pass.—The State Engineer shall receive an annual salary of

three thousand dollars. In traveling upon the line of any railway in this State, in the discharge of his duties, he shall also be entitled to charge for the actual amount paid out for railway fare and traveling expenses, in no case to exceed four dollars per day in excess of railway fare paid; and should any railway company voluntarily provide said State Engineer with free transportation over its line, he shall be authorized to accept the same in behalf of the State, and shall not charge the State the amount which would otherwise be paid for such transportation. He shall, in his report, state the amount paid by him for transportation on each railway line in the State, also what railway lines have provided him with free transportation.

SEC. 3. Continued—Office and Expenses—Engineer's Secretary—Vouchers for Expenses.—The office of the State Engineer shall be in the Capitol building in the city of Austin, in rooms to be designated by the Secretary of State. There shall be allowed the State Engineer for office furniture, stationery, postage, and other office expenses one thousand dollars per annum. The State Engineer shall employ a secretary, who shall be a competent draftsman, and perform such duties as may be required by the State Engineer. The secretary of the State Engineer shall receive a salary of fifteen hundred dollars per annum. The salary of the State Engineer and his secretary shall be paid monthly from the State Treasury. All vouchers for traveling and office expenses of the State Engineer and his secretary shall be paid monthly from the State Treasury. All vouchers for traveling and office expenses of the State Engineer and his secretary shall be paid upon certified vouchers, approved by the Governor.

SEC. 4. Continued—Oath of.—Before entering upon the duties of his office, the State Engineer and his secretary each shall subscribe to the following oath, in addition to the usual oath of office: "And I do further swear (or affirm), that I am not connected, officially or otherwise, with any railroad company or transportation line, either within or outside of this State, and that I am not a stockholder or in any manner interested in any railroad company or transportation line whatever, so help me God."

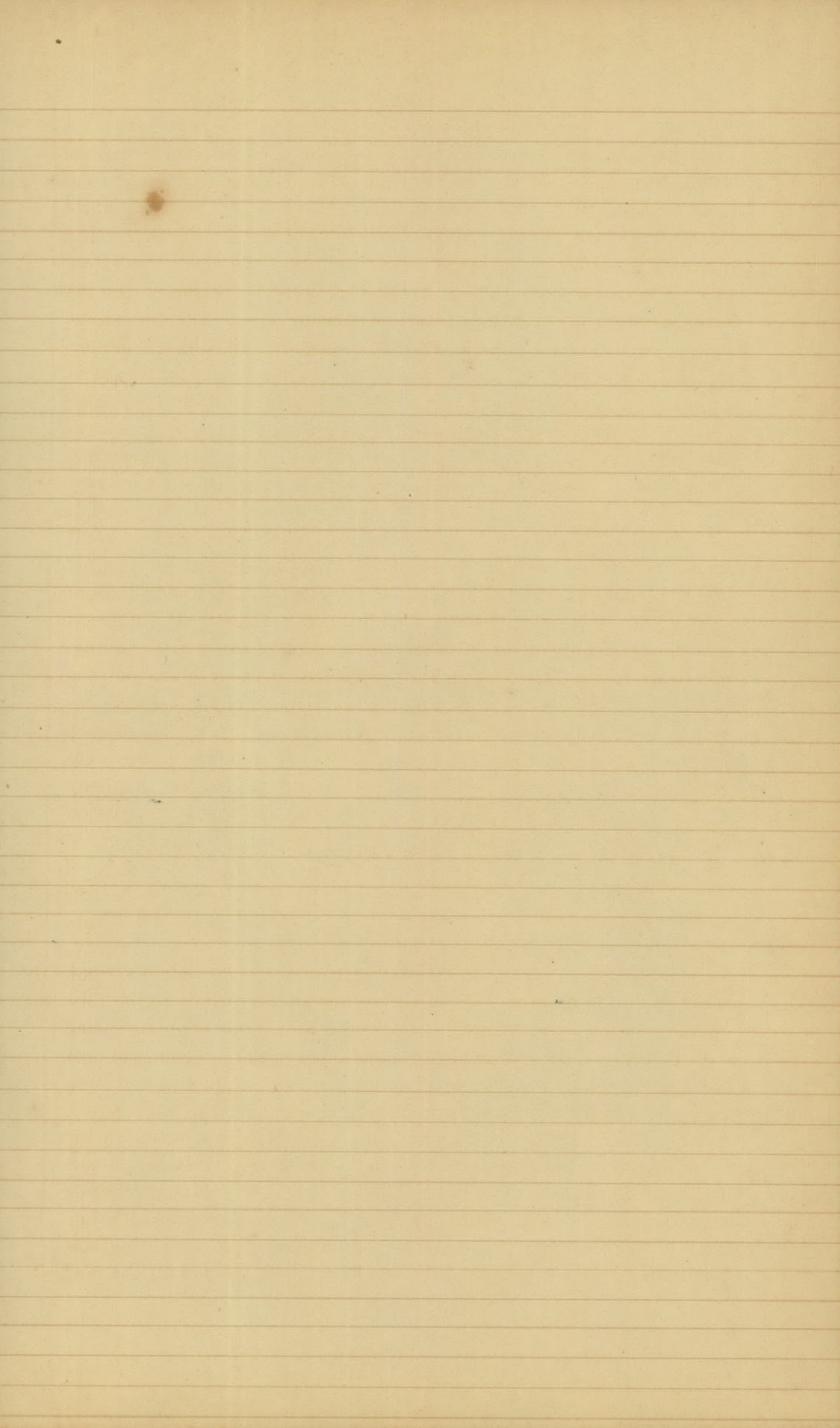
SEC. 5. Continued—Duties of—Report to Attorney-General.—The State Engineer shall perform such duties as are now, or may hereafter be prescribed by law, and shall twice in each year, and at such other times as he may deem it necessary, carefully inspect the railroads in this State, and keep himself informed of the condition of the same, and manner in which they are operated, with the special reference to the safety and proper accommodation of the public, which inspection shall include the condition of road-bed, track and

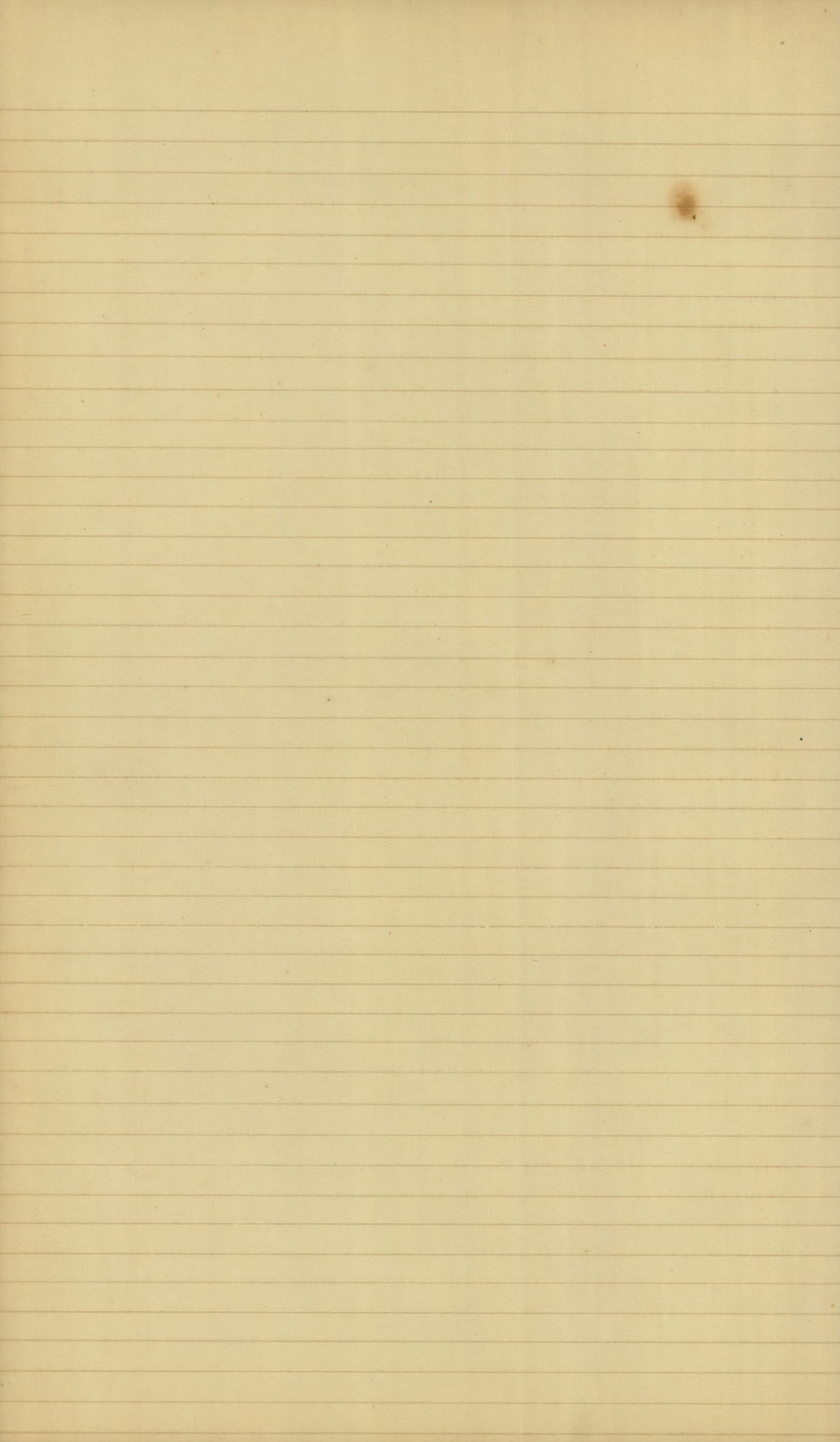
bridges ; character and condition of cars, station houses, platforms and other facilities incident to transportation business. Should such inspection indicate a non-compliance with the law on the part of any railroad, such non-compliance shall be presented in proper and official form to the Attorney-General, who shall proceed to investigate and enforce penalty for dereliction, according to existing statutes, or as hereinafter provided.

SEC. 6. Continued—Report to Governor—Schedule of Maximum Rates for Nineteenth Legislature.—The State Engineer shall, on the first day of December of each year, make a report to the Governor of all matters pertaining to his office, and especially report upon the inspection of all the railroads in the State, and he shall incorporate in said report any suggestions he may have to make in regard to changes in existing laws connected with the management and control of railroads in this State. He shall also, whenever required by the Governor, make a special report of the inspection authorized and required under this act of any railroad in this State. That the said engineer shall prepare and transmit to the next Legislature a complete freight classification and schedule of reasonable maximum rates for freight transportation for each of the railroads operated in this State ; and copies of the same shall be furnished to the members of the Nineteenth Legislature thirty days before the meeting of the said Legislature.

SEC. 7. Uniform Rates of Transportation—Discrimination punished—Schedule of Rates to be posted—Notice of Change of Rates—Station Agent Guilty of Misdemeanor for Failure to keep Schedule posted.—Be it further enacted, that charges for transportation on each class or kind of freight moving in the same direction, shall be uniform, and any unjust discrimination in the rates or charges for the transportation of any freight made against any person or place, on any railroad operated in this State, is declared to be unlawful. If any railroad corporation shall wilfully charge, collect, or receive from any person or persons for the transportation of any freight upon its railroad, a higher or greater rate of toll or compensation than it shall charge, collect, or receive from any other person or persons, for the transportation of the like quantity of freight of the same class, being transported from the same point in the same direction, over equal distances of the same railroad, or if it shall charge, collect, or receive from any person or persons for the use and transportation of any railroad car or cars upon its railroad, a higher or greater sum than it shall charge, collect, or receive from any other person or persons for the use or transportation of a car or cars of the same class

for a like purpose, from the same point in the same direction and an equal distance; or if any railroad company shall charge one person more for transporting freight of the same class, in equal or less quantities, over its road, for the same or a less distance, than it charges another for the same or a greater distance, all such discriminating rates, charges or collections, whether made directly or by means of any rebate, or other shift or evasion, shall be considered and taken as *prima facie* evidence of extortion and unjust discrimination, which is hereby prohibited and declared unlawful, and any railroad company or companies, for such violation of law, shall forfeit and pay to the person or persons injured thereby the sum of five hundred dollars, to be recovered before any court having jurisdiction of the amount, in any county through, or into which the freight may have been transported. Every railroad company or corporation doing business in this State, shall hereafter be required to keep posted in a conspicuous place, at all depots, a printed or written schedule of its freight charges from its principal office or place of business to all depots on its line or lines of road within this State. Such schedule shall specify the different classes or kinds of freight, with an enumeration of the articles belonging to each class, the charge for each class, per car load, and the charge for each class per hundred pounds in quantities less than car loads. It shall be unlawful for any railroad company to change such freight tariffs without giving five days notice to the public in the manner above required, and it shall be the duty of every railroad company in this State to furnish its station agents with the printed or written notices herein mentioned at least five days before any changes are to take effect. Any railroad company violating any of the provisions of this act shall, for every five days it neglects to furnish the notices herein required to any of its station agents, forfeit the sum of five hundred dollars to the county in which the depot is situated, to be recovered in any court having competent jurisdiction, said amount, when recovered, to be used for road and bridge purposes. It shall be the duty of every station agent of the railroads of this State upon being furnished with the printed or written notices mentioned in the foregoing, to post the same in some conspicuous place in his depot buildings, and keep them posted until the changes proposed take effect. Any station agent failing or refusing to post up said notices within two days after the same shall have been furnished him, or failing to keep the same posted, as herein required, shall be deemed guilty of a misdemeanor, and upon conviction of the same before any court having the proper jurisdiction, shall be fined not less than twenty-five dollars and not more than one hundred dollars. The road of the company shall include all the road





in use by such company, whether owned or operated under control or lease: *Provided*, That nothing herein contained shall be construed to repeal article 4257 of the Revised Civil Statutes, prescribing maximum rates, and prohibiting discriminations.

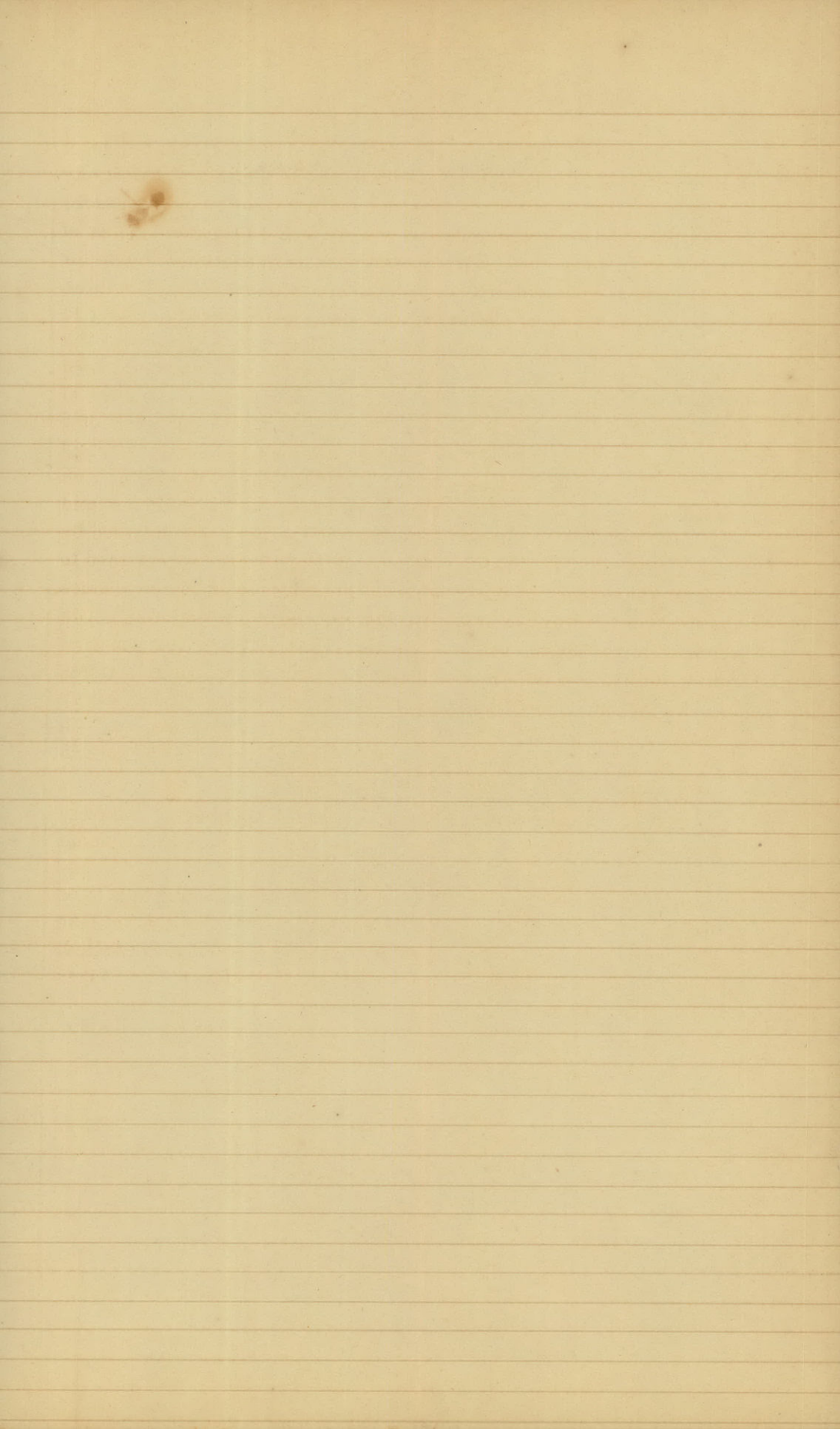
SEC. 8. Goods forwarded in the Order of Receipt—Notice to Consignee of Arrival of Freight—Afterwards, Company liable as Warehouseman.—Where railroads within this State receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are received: the first received to be the first forwarded, without giving the preference to one over another: and in case of failure to do so they shall be liable for all loss occurring while the goods remain, and for all damage occasioned or in any wise resulting from delay: *Provided*, That the trip or voyage shall be considered as having commenced from the time of the signing of bill of lading, and as having ended upon the arrival of freight at point of destination, and written notices served upon the consignee that it is ready for delivery upon payment of freight and charges. It is further provided, that should the consignee of the goods fail to receive them promptly after such notice is served, the liability of the railroads thereafter shall be the same as that of warehousemen.

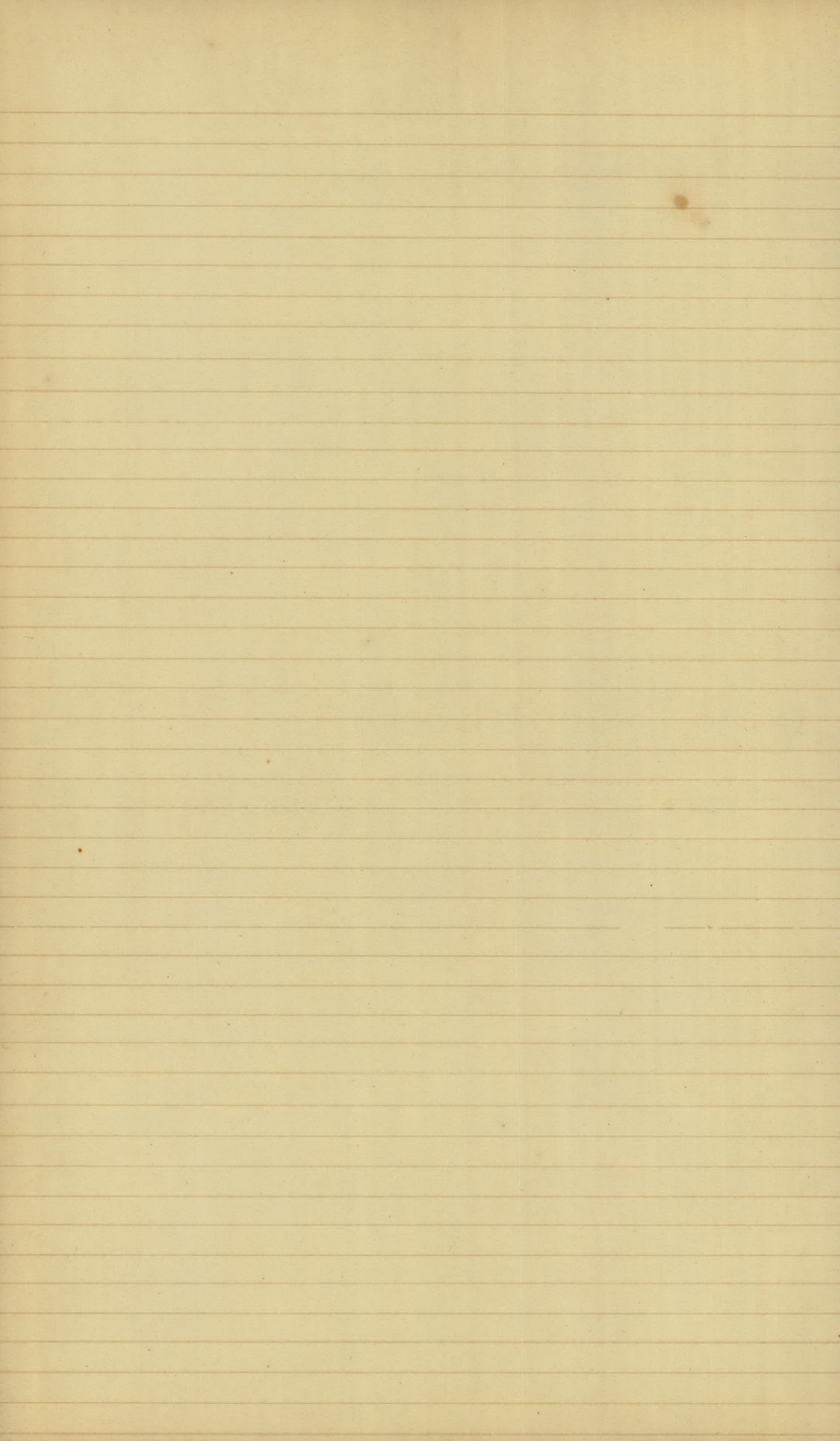
SEC. 9. Maximum Passenger Fare Allowance of Baggage—Fare paid to Conductor—Children under Ten Years.—The passenger fare upon all railroads in this State shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight: *Provided, however*, That where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charge in no case shall be less than twenty-five cents: *And provided further*, That when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare: *Provided, further*, That in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile: *Provided, further*, Railroads shall be required to keep their ticket offices open half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile.

SEC. 10. Duties of Attorney-General—Notice to Company of Violations of Law by its Agents—Action by aggrieved Party.—That direct and prompt remedies may be had, and penalties enforced in case of violation of any laws herein named, it is made the special duty of the Attorney General, whenever information is filed with him by the State Engineer, or any other person, that any railroad company in this State has violated any provisions of the laws

of this State, providing for the transportation of passengers or freight, or is unjustly discriminating in its charges for transportation against any person or place in this State, or is guilty of extortion in its charges for transportation against any persons or place in this State, or is guilty of extortion in its charges for transportation of passengers and freight, or for improper condition of road-bed, track, bridges, or other structures, cars, station-houses or platforms, to give ten days notice in writing to said corporation of said complaint, and after an investigation of the matter he shall proceed to determine whether the matters complained of are violations of the law, and shall give notice to said company of his decision respecting the same, and if any such violation of the law is continued, after the railroad company is so notified, or if the actual damage is not paid to the party aggrieved, within ten days after such notification, he shall cause proceedings to be instituted against said railroad company or companies, to recover the penalties provided by law: *Provided*, That nothing herein contained shall be construed to prevent any citizen of this State from bringing suit in his own name against any railroad or transportation company for discrimination in freight or passenger charges: *Provided further*, That the penalties prescribed by law for any overcharge shall not be recoverable unless the party aggrieved shall give notice thereof in writing, to the railway company, or to the agent demanding or receiving the same, and said company shall fail within twenty days thereafter, to refund to such party aggrieved, the amount of such overcharge.

SEC. 11. Emergency Clause.—The near approach of the close of the session, and the importance of a law regulating the management and control of railroads in this State, creates an imperative public necessity and emergency that the constitutional rule requiring bills to be read on three several days should be suspended, and that this act take effect and be in force from and after its passage, and it is so enacted. Approved April 10, 1883. [Laws, 1883, Regular Session, p. 67.] Takes effect after passage.





APPENDIX.

in the same manner as other county officers are elected. (Const., Art. 16, § 23; Act, Aug. 23, 1876, p. 265, § 1.) (a)

ART. 4616. Inspector's Seal of Office.—The county commissioners' court of each county shall furnish to the inspector for such county a seal of office, having upon it the words "Inspector of Hides and Animals, —— county, Texas," [the blank to be filled with the name of the county], and each inspector and his deputy shall certify their official acts with the impress of such seal. Upon his retirement from office the inspector shall deliver such seal, together with the books, papers and records of his office, to his successor. (Ib., § 6.)

ART. 4619. Certain Terms construed.—Whenever in this chapter the word "inspector" is used, it shall be taken and deemed to be "the inspector of hides and animals," the words "deputy inspector" shall be taken to mean the "deputy inspector of hides and animals," and the words "county, district or inspection district" shall be held to include each organized county in this State not herein excepted, together with any unorganized county that may be attached for judicial purposes to any such county. (Ib., § 27.)

ART. 4620. Inspector to authenticate Bills of Sale, etc. Every inspector shall have authority to authenticate bills of sale of animals, and give certificates of acknowledgment of the same under his hand and seal. (Ib., § 30.)

ART. 4621. Inspector to examine all Hides and Animals about to be Shipped out of County.—It shall be the duty of the inspector, in person or by deputy, to faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county, for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries, and the inspector shall keep a record, in a well bound book, in which he shall record a correct statement of the number, ages, marks and brands of all animals inspected by him, and the number, mark and brand of all hides inspected by him, and whether the same are dry or green, and the name or names of the vendor or vendors, and of the purchaser or purchasers thereof. (Ib., § 7.)

ART. 4623. Sheep, Goats and Swine not included herein. The provisions of this chapter shall not be so construed as to include sheep, goats, swine, or hides of either, nor to involve the re-inspection

(a) Sec. 2, ch. 79, acts of 1879, p. 89, provides as follows: "Sec. 2. The Governor is hereby authorized to appoint, with the advice and consent of the Senate, one notary public and one cattle and hide inspector in each of the unorganized counties of the State."

PROVISIONS OF THE REVISED STATUTES.

TITLE 93.

STOCK LAWS.

CHAPTER 5.

OF REGULATIONS FOR THE PROTECTION OF STOCK-RAISERS IN CERTAIN LOCALITIES.

ARTICLE	ARTICLE
4611. Inspector of hides and animals to be elected.	4628. Bill of sale to be taken and animals to be inspected before shipment out of county.
4616. Inspector's seal of office.	4630. Contents of certificate of inspection—Record of with county clerk.
4619. Certain terms construed.	4633. Exportation of cattle to Mexico.
4620. Inspector to authenticate bills of sale, etc.	4650. Inspections to be personal.
4621. Inspector to examine all hides and animals about to be shipped out of county.	4651. Contents of certificate of inspection.
4623. Sheep, goats and swine not included herein.	4652. Power to make a second inspection.
4624. Unbranded hides and animals—No certificate of inspection granted, unless, etc.	4655. Continued—Writ of sequestration in aid of inspection.
4625. Unbranded calves and yearlings may be seized, when.	4658. Change of destination after inspection.
4626. Unbranded hides and animals may be seized, when.	4659. Certain counties excepted—Cattle on board railroad trains not subject to inspection, unless, etc.

ART. 4611. Inspectors of Hides and Animals to be elected.—Each organized county, not expressly excepted herein, shall constitute an inspection district for the inspection of hides and animals, and at each general election an officer to be styled "Inspector of hides and animals" shall be elected by the qualified voters of such county

in the same manner as other county officers are elected. (Const., Art. 16, § 23; Act, Aug. 23, 1876, p. 265, § 1.) (a)

ART. 4616. Inspector's Seal of Office.—The county commissioners' court of each county shall furnish to the inspector for such county a seal of office, having upon it the words "Inspector of Hides and Animals, —— county, Texas," [the blank to be filled with the name of the county], and each inspector and his deputy shall certify their official acts with the impress of such seal. Upon his retirement from office the inspector shall deliver such seal, together with the books, papers and records of his office, to his successor. (Ib., § 6.)

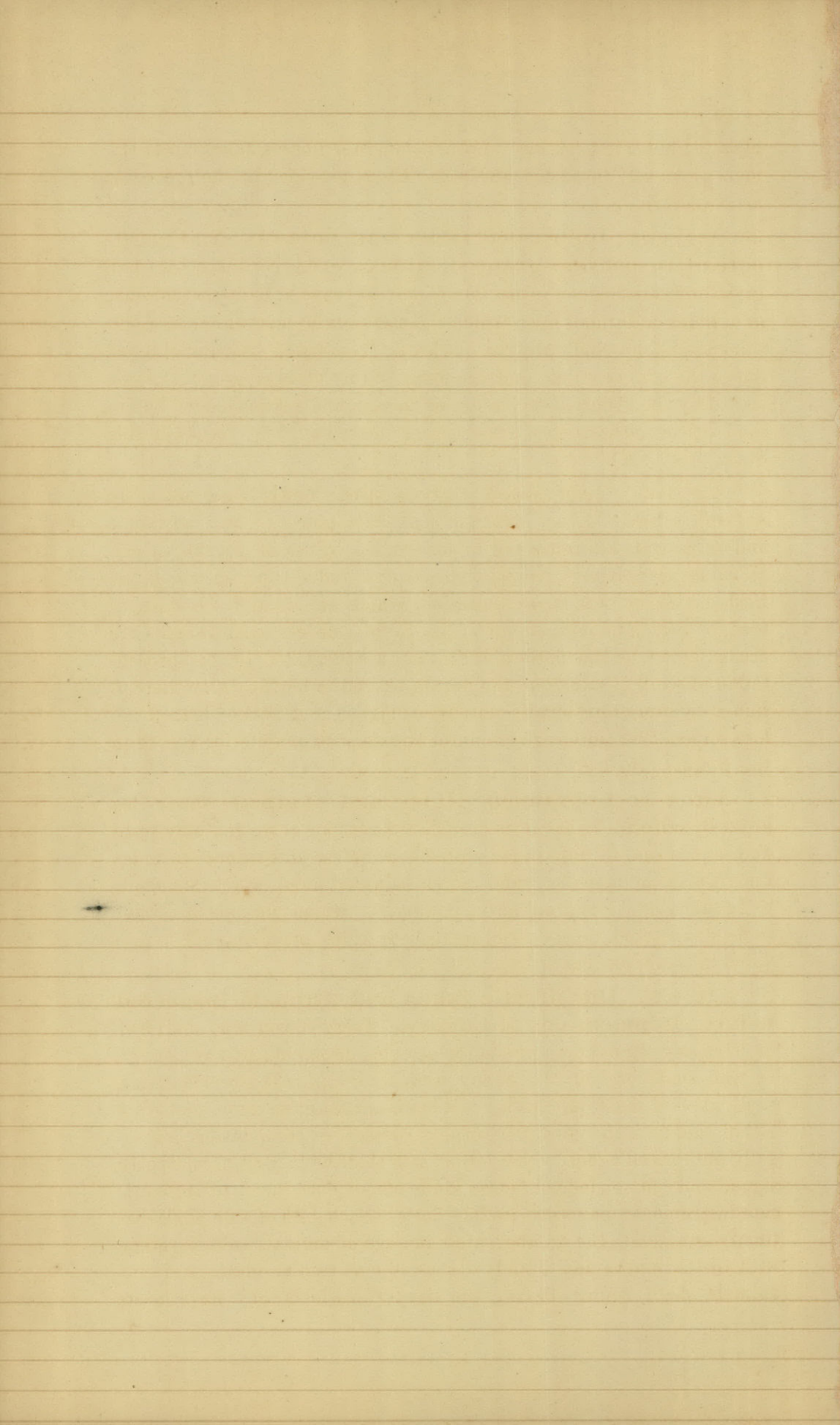
ART. 4619. Certain Terms construed.—Whenever in this chapter the word "inspector" is used, it shall be taken and deemed to be "the inspector of hides and animals," the words "deputy inspector" shall be taken to mean the "deputy inspector of hides and animals," and the words "county, district or inspection district" shall be held to include each organized county in this State not herein excepted, together with any unorganized county that may be attached for judicial purposes to any such county. (Ib., § 27.)

ART. 4620. Inspector to authenticate Bills of Sale, etc. Every inspector shall have authority to authenticate bills of sale of animals, and give certificates of acknowledgment of the same under his hand and seal. (Ib., § 30.)

ART. 4621. Inspector to examine all Hides and Animals about to be Shipped out of County.—It shall be the duty of the inspector, in person or by deputy, to faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county, for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries, and the inspector shall keep a record, in a well bound book, in which he shall record a correct statement of the number, ages, marks and brands of all animals inspected by him, and the number, mark and brand of all hides inspected by him, and whether the same are dry or green, and the name or names of the vendor or vendors, and of the purchaser or purchasers thereof. (Ib., § 7.)

ART. 4623. Sheep, Goats and Swine not included herein. The provisions of this chapter shall not be so construed as to include sheep, goats, swine, or hides of either, nor to involve the re-inspection

(a) Sec. 2, ch. 79, acts of 1879, p. 89, provides as follows: "Sec. 2. The Governor is hereby authorized to appoint, with the advice and consent of the Senate, one notary public and one cattle and hide inspector in each of the unorganized counties of the State."



of salted hides in packeries or other slaughter houses taken from animals previously inspected and returned, as provided in the preceding articles. (Ib., § 7.)

ART. 4624. Unbranded Hides and Animals—No Certificate of Inspection granted, unless, etc.—No inspector shall grant any certificate of inspection of any unbranded hides or animals, or of hides or animals upon which the marks or brands cannot be ascertained; and he shall prevent the same from being taken or shipped out of the county unless they are identified by proof or by a bill of sale signed by the owner of such hides or animal, and acknowledged before some officer authorized to authenticate instruments for record in this State. (Ib., § 8.)

ART. 4625. Unbranded Calves and Yearlings may be seized, when.—Every inspector shall have power to, and may seize and sequester all unmarked or unbranded calves or yearlings; and all calves or yearlings, freshly marked or branded, and on which the fresh marks or brands are unhealed, which are about to be slaughtered, or driven or shipped out of the county, unless such animals are accompanied by the mothers thereof, or are identified by the presentation of a bill of sale from the person proved to be the owner thereof, signed by him or his legally authorized agent, and acknowledged before some officer authorized to authenticate instruments for record in this State. (Ib., § 9.)

ART. 4626. Unbranded Hides and Animals may be seized, when.—Every inspector shall have power to, and may seize and sequester all unbranded animals or hides, and animals or hides upon which the mark or brand cannot be ascertained, which are about to be taken or shipped out of the county, or which animals are about to be slaughtered, unless such animals or hides are identified as provided in the preceding article. (Ib., § 10.)

ART. 4628. Bill of Sale taken and Animals inspected before Shipment out of County.—Every person who shall buy or drive any animal or animals for sale or shipment out any county, or who shall buy or drive any animal or animals for slaughter, shall, at the time of purchasing and before driving the same, procure a bill of sale from the owner or owners thereof, or from his or their legally authorized agent, which bill of sale shall be in writing, properly signed and acknowledged before some officer authorized to authenticate instruments for record in this State. Such bill of sale shall distinctly enumerate the number, kind and age of animals sold, together with all the marks and brands discernable on said animals; and said animals shall, before leaving the county in which they have been

gathered, be inspected by the inspector of such county or his deputy. (Ib., § 11.)

ART. 4630.—Contents of Certificate of Inspection—Record of with County Clerk.—Whenever an inspector shall have inspected any animal or animals, as herein provided, he shall, on the presentation of a bill of sale or power of attorney from the owner or owners of such animal or animals, or his or their agent, duly authorized in writing, which bill of sale, power of attorney or authority shall be in writing, duly signed and acknowledged by the person executing the same before some officer authorized to authenticate instruments for record in this State, and on payment to said inspector of his legal fees, deliver to the purchaser of the animals mentioned in such bill of sale or power of attorney, or his agent, a certificate setting forth that he has carefully examined and inspected such animal or animals, and that said purchaser has in all respects complied with the provisions of this chapter, which certificate shall not be complete until the same and bill of sale herein provided for shall be recorded in the office of the clerk of the county court of the county and be certified to by said clerk under his hand and seal. Such certificate shall be then delivered to the purchaser or purchasers, and shall protect him or them from the payment of inspection fees in any other district for the animals therein described, except the county from which the same may be exported. (Ib., § 13.)

ART. 4633. Exportation of Cattle to Mexico.—Any person intending to drive or ship any animals to the republic of Mexico, may ship the same from any point on the coast of Texas, or may drive or ship them across the Rio Grande river at any point where a custom-house of the United States is located; and shall not drive or ship such animals across the Rio Grande at any other point or points; and he shall cause all such animals to be inspected by the inspector of the district in which the point of shipment or place at which they are to be driven across said river is situated; such inspection shall be made before shipment from the state or passage across said river of said animals. (Ib., § 16.)

ART. 4650. Inspection to be Personal.—In making inspections the inspector shall not trust to the statements or representations of any person, but he shall in person carefully inspect and examine each animal or hide separately, so as to identify the marks and brands, and, in case of animals, the ages and sexes. (Ib., § 29.)

ART. 4651. Contents of Certificate of Inspection.—He shall also carefully examine the bills of sale and lists of brands and

marks for the cattle inspected by him, and if satisfied that the person claiming the cattle inspected has correct bills of sale or chain of transfer in writing from the recorded owner, or is the owner himself in whole or part, of the mark and brand of each animal in his drove or herd, which should be inspected, and that he has none other in said herd, or under his control to be carried with it, he will then, and not until then, make out a certificate, which he shall first enter in his record, under his hand and seal, containing the number of cattle in each mark and brand, with their respective ages and sexes, thus inspected, and that they appear to be the property of the person for whom they were inspected, naming him or her, as appears by bills of sale from the recorded owner of the marks and brands on the cattle inspected by him, or the owner of the brand and mark himself or herself, and that he has none other in his herd or under his control that should be inspected; and that he intends to drive or ship them, naming the place in the State, for sale or slaughter; or, if out of the State, he shall then name the place on the border of the State through which it is proposed to drive or ship such stock. (Ib., § 29.)

ART. 4652. Power to make a Second Inspection.—Whenever any person shall be about to drive or ship any stock out of the State, if the inspector shall believe, or is informed by any creditable person, that said person has other stock in his herd than those covered by his original certificate of inspection, or by subsequent purchase duly attested by proper bill of sale, the inspector at said point of shipment, or border county where said person leaves the State, shall be authorized to inspect said stock in the same manner as in the original inspection; and if any stock is found in said herd other than those covered by his original certificate of inspection, or by subsequent purchase duly and properly authenticated by bill of sale, the fees of said inspection shall be paid as provided in article 4635 of this chapter: (*Provided*, That the said inspector shall in no case be authorized to receive or demand more than three cents per head for each head of cattle inspected); but if not, then said fees shall be paid by the person at whose instance said inspection was made; and if said inspection is made by the inspector, at his own instance, and no stock is found in said herd except those properly accounted for under the provisions of this article, then said inspector shall receive no fees for said inspection. (Acts, 1879, Extra Session, ch. 22.)

ART. 4655. Continued—Writ of Sequestration in Aid of Inspection.—If the person in charge of any such cattle shall refuse to deliver the same into the possession of the inspector, such inspector may apply for and obtain a writ of sequestration from any justice of

the peace, county judge or district judge, according as the value of such cattle may come within the jurisdiction of either. Such writ may be obtained upon the affidavit of the inspector, stating that he believes such cattle have been unlawfully acquired, and shall issue without bond, and be forthwith executed by the sheriff or any constable of the county; and thereupon the proceedings referred to in the preceding article shall be had before the officer issuing the writ, either in term time or in vacation. (Ib.)

ART. 4658. Change of Destination after Inspection.—If the owner of the inspected herd should desire to sell, slaughter or ship the cattle, or any of them, at any other place than the destination named in the original certificate of inspection, he may do so by first having his herd inspected at the point of destination therein named, and a new certificate of inspection issued to him at that point, naming the new point of destination or shipment; and upon his arrival at such new point of destination like proceedings shall be had, in the way of inspection, comparison and return of the certificates of inspection as are prescribed for the original point of destination. (Ib.)

ART. 4659. Certain Counties excepted—Cattle on Board Railroad Trains not Subject to Inspection, unless, etc.—That the counties of Anderson, Austin, Angelina, Bowie, Brazos, Burleson, Bastrop, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Freestone, Falls, Galveston, Goliad, Grayson, Gregg, Grimes, Hardin, Harrison, Henderson, Hill, Hunt, Jackson, Jasper, Jefferson, Johnson, Kaufman, Lamar, Lee, Leon, Liberty, Madison, Marion, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Parker, Polk, Rains, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Tarrant, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, Washington, Wise, Wood, Calhoun and Victoria, Wheeler, Oldham, Donley and the unorganized counties attached to Wheeler, Oldham and Donley counties, Hidalgo, and Starr are hereby exempted from the operations of this act and the provisions of the same shall in no wise relate or apply to the aforesaid counties: *Provided*, That in those counties bordering on the lines of the State, except those bordering on Red River, whether organized or unorganized, the Governor shall appoint an inspector, whose duty it shall be to inspect under the provisions of this act: All stock about to be driven or shipped out of the State or in any other county exempt from the operations of this act where there is a depot or place for the shipment of cattle: *Provided*, That such cattle shall not be subject to inspection on board of any railroad, unless the same

have been placed on board of such train for the purpose of evading the provisions of this act: *And provided further*, That the counties, of Limestone, McLennan, Bell, Calhoun, Navarro, Hood, Houston, Somerville, Bosque, Austin, Jackson and Victoria shall be exempt from all laws regulating inspections of hides: *And provided further*, That the Governor is hereby authorized and required to appoint one inspector of hides and animals for Harris county, who shall hold his office until the next general election and until his successor shall be elected and qualified. (Act of April 12, 1883; Laws, 1883, regular session, ch. 79, p. 79.)

PROVISION OF THE PENAL CODE.

TITLE 17.

OF OFFENSES AGAINST PROPERTY.

CHAPTER 3.

MALICIOUS MISCHIEF.

ARTICLE 677. Destroying telegraph wire or obstructing message.

ART. 677. Destroying Telegraph Wire or Obstructing Message.—If any person shall intentionally break, cut, pull or tear down, misplace, or in any other manner injure any telegraph wire, post, machinery, or other necessary appurtenance to any telegraph line, or in way wilfully obstruct or interfere with the transmission of messages along such telegraph line, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not less than one hundred nor more than two thousand dollars. (P. C., 710.)

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