

L A W S

OF THE

REPUBLIC OF TEXAS

PASSED AT THE

SESSION OF THE FOURTH CONGRESS

PRINTED BY ORDER OF THE SECRETARY OF STATE.

IN ONE VOLUME.

HOUSTON.
1840

L A W S.

AN ACT

Providing for the better Dissemination of the Laws.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the Secretary of State be and he is hereby authorized and required to contract for the publishing of the Laws of this Congress in one of the newspapers in each of the Senatorial Districts in the Republic in which any paper is published, in case the printing of the same shall not cost the Government more than three hundred dollars for each paper.

Sec. 2. Be it further enacted, That the proprietors of the papers publishing the Laws under the provisions of the first section of this act, shall be entitled to pay upon the order of the Secretary of State, and that there be and is hereby specially appropriated a sufficient amount of the Promissory Notes of Government.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.

DAVID G. BURNET,
President of the Senate.

Approved 25th January, 1840.

MIRABEAU B. LAMAR.

AN ACT

To adopt the Common Law of England,—to repeal certain Mexican Laws, and to regulate the Marrital Rights of parties.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the Common Law of England (so far as it is not inconsistent with the Constitution or the Acts of Congress now in force)

shall, together with such acts be the rule of decision in this Republic, and shall continue in full force until altered or repealed by Congress.

Sec. 2. Be it further enacted, That all Laws in force in this Republic, prior to the first of September, one thousand eight hundred and thirty-six (except the Laws of the Consultation and Provisional Government, now in force, and except such Laws as relate exclusively to grants and the colonization of lands in the State of Coahuila and Texas, and also such Laws as relate to the reservation of Islands and Lands, and also of Salt-Lakes, Licks and Salt-Springs, Mines and Minerals of every description; made by the General and State Governments) be, and the same are hereby repealed.

Sec. 3. Be it further enacted, That neither the lands nor slaves which the wife may own, or to which she may have any right, title or claim at the time of her marriage, nor the lands nor slaves to which she may acquire, during the coverture, any right, title or claim, by gift, devise or descent, nor the increase of such slaves in each case, nor the paraphernalia as defined at Common Law, which the wife may have at the time of the marriage, or which she may acquire during the coverture as aforesaid, shall, by virtue of the marriage, become the property of the husband, but shall remain the separate property of the wife; Provided, however, That during the continuance of the marriage, the husband shall have the sole management of such lands and slaves.

Sec. 4. Be it further enacted, That all property which the husband or wife may bring into the marriage except land and slaves and the wife's paraphernalia and all the property acquired during the marriage, except such land or slaves, or their increase, as may be acquired by either party, by gift, devise or descent, and except also the wife's paraphernalia, acquired as aforesaid, and during the time aforesaid, shall be the common property of the husband and wife, and during the coverture may be sold or otherwise disposed of by the husband only; it shall be first liable for all the debts contracted by the husband during the marriage, and for debts contracted by the wife for necessities during the same time; and upon the dissolution of the marriage, by death, after the payment of all such debts, the remainder of such common property shall go to the survivor, if the deceased have no descendant or descendants; but if the deceased have a descendant or descendants, the survivor shall have one half of such common property, and the other half shall pass to the descendant or descendants of the deceased.

Sec. 5. Be it further enacted, That parties intending to enter into the marriage state, may enter into what stipulations they please, provided they be not contrary to good morals, or to some rule of law, and in no case shall they enter into any agreement, or make any renunciation, the object of which would be to alter the legal orders of descent either with respect to themselves in what concerns the inheritance of their children or posterity which either may have by any other person, or in respect to their common children—nor shall they make any valid agreement to impair the legal rights of the husband over the person of the wife, or the persons of their common children.

Sec. 6. Be it further enacted, That every matrimonial agreement must be made by an act before a Notary Public and two witnesses; the minor capable of contracting matrimony, may give his or her consent to any agreement which this contract is susceptible of; provided such agreement be made by the written consent of both parents, if both be living; if not by that of the survivor; if both be dead, then by the written consent of the minor's guardian.

Sec. 7. Be it further enacted, That no matrimonial agreement shall be altered after the celebration of the marriage.

Sec. 8. Be it further enacted, That when the wife, by a marriage contract, may reserve to herself any property or rights to property (whether such rights be in esse or expectancy) for such reservation to be valid as to the subsequent purchasers or creditors of her husband, the said contract must be acknowledged by her husband or proved by at least one witness, and recorded in the Clerks Office of the county court of the county in which the married parties may reside.

Sec. 9. Be it further enacted, That the husband may sue either alone or jointly with his wife, for the recovery of any effects of the wife, and in case he fail or neglect so to do, she may, by the authority of the court, sue for such effects in her name.

Sec. 10. Be it further enacted, That should the husband refuse or fail to support his wife, from the proceeds of the lands or slaves she may have, or fail to educate her children as the fortune of the wife would justify, she may in either case complain to the county court, who, upon satisfactory proof shall decree, that so much of such proceeds shall be paid to the wife for the support of herself and for the nurture and education of her children, as the court may deem necessary.

Sec. 11. Be it further enacted, That if, during the coverture a sale of any of the lands or slaves of the wife be illegally

effected, no limitation shall commence to run during the coverture; and should the wife survive the dissolution of the marriage, she may sue for and recover such property; should the wife survive the dissolution, but not the time allowed by the law of limitations, then the running of such law shall cease till all the children of the deceased mother shall have arrived at the age of majority, or those under that age shall have married, and the heirs of the wife shall have the unexpired time allowed by the law of limitations, within which to institute their suit for the recovery of said property; and if the wife shall not survive the dissolution of the marriage, the law of limitations shall not commence running, as to the children of the deceased mother, until all the children shall have arrived at the age of majority, or those under that age shall have married.

Sec. 12. Be it further enacted, That all the effects which both the husband and wife reciprocally possess at the time the marriage may be dissolved, shall be regarded as common effects or gains, unless the contrary be satisfactorily proved.

Sec. 13. Be it further enacted, That marriages that may be entered into in this Republic after the passage of this law, shall be governed by the provisions of the same. The marital rights of persons married in other countries, who may remove here after the passage of this act, shall, in regard to property acquired in this Republic during the marriage, be regulated by the provisions of the same. The marital rights of persons married here before the passage of this act, or of persons married in another country, who removed here before its passage, shall be regulated by the law as it aforesaid was.

DAVID S. KAUFMAN,

Speaker of the House of Representatives.

DAVID G. BURNET,

President of the Senate.

Approved 20th January, 1840.

MIRABEAU B. LAMAR.

AN ACT

Fixing the time at which Laws passed by Congress shall go into effect, and prescribing the manner in which the same shall be promulgated.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That every Act of Congress hereafter to be made, shall commence

and be in force with the commencement of the fortieth day after the day of the adjournment of the session of Congress, at which such Acts may be passed, unless in the act itself another time for the commencement thereof be particularly mentioned, and in every case the day on which it may be passed by Congress shall be noticed in the publication next after the title of the act.

Sec. 2. Be it further enacted, That whenever one Law which shall have repealed another, shall itself be repealed, the former Law shall not be revived without express words to that effect.

Sec. 3. Be it further enacted, That as often as a question shall arise, whether a Law, passed during any session of Congress, change or repeal a law passed during the same session the same construction shall be made as would have been made if this act had never been passed.

Sec. 4. Be it further enacted, That in printing the Acts of Congress it shall be the duty of the public printer to print the same in two parts, the first to contain acts of a general nature with a separate index, and the second to contain those laws which are merely local and private in their operations, and as soon as the same shall be printed, (which it shall be the duty of the printer to do within thirty days after the adjournment of each session of Congress and there shall be two thousand copies in number,) it shall be the duty of the Secretary of State to cause one copy of the said Laws to be sent at the public expense, by mail, to the respective clerks of courts within this Republic, for the immediate use of their courts.

Sec. 5. Be it further enacted, That it shall be the duty of the Secretary of State to certify beneath the laws transmitted to the public printer, for publication, the day on which each session of Congress adjourned, and the printer shall print the same beneath the laws of a general nature of each session of Congress.

Sec. 6. Be it further enacted, That this act shall take effect from the passage thereof.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved 16th January, 1840.

MIRABEAU B. LAMAR.

AN ACT

To regulate Interest.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the distinction between legal and conventional interest shall be known and recognized by the laws of this Republic.

Sec. 2. Be it further enacted, That all written contracts ascertaining the sum due, when no specific premium of rate of interest is expressed, interest shall be taken, recovered and allowed, at the rate of eight per centum per annum, from and after the said sum is due, and payable.

Sec. 3. Be it further enacted, That the parties to any written contract, may agree to and stipulate for any premium or rate of interest, not exceeding twelve per centum per annum on the amount or value of the contract, and the same may be taken, "recovered" and allowed.

Sec. 4. Be it further enacted, That all contracts or instruments of writing whatsoever, which may, in any way, directly or indirectly, violate the foregoing provisions of this act, by stipulating for allowing or receiving a greater premium or rate of interest than twelve per centum per annum, for the loan, payment or delivery of any money, goods, wares, merchandize, bonds, notes of hand, or any commodity, shall be void and of no effect for the whole premium or rate of interest only, but the principal sum of money, or the value of the goods, wares, merchandize, bonds, notes of hand or commodity, may be received and recovered.

Sec. 5. Be it further enacted, That all judgments of the several courts of this republic shall bear interest at the rate of eight per cent. per annum, from and after the date of judgment, and the same shall be recovered and allowed, provided, however, that such judgments shall be given only upon contracts hereafter made, in which there may be no more than eight per cent. stipulated in writing.

Sec. 6. Be it further enacted, That all parts of laws, now in force, contravening the provisions of this act, be and the same are hereby repealed.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.

DAVID G. BURNET,
President of the Senate.

Approved January 18th, 1840.

MIRABEAU B. LAMAR.

AN ACT

Providing for the Appointment of Assessing Officers.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That, in all cases where, by reason of the death of the Chief Justice, or other cause, the returning officers of a county have not been appointed, agreeably to the provisions of an act "entitled an act supplementary to an act entitled an act to raise a revenue by direct taxation," approved January 26th 1839; the Chief Justice of the county shall be authorized and empowered to appoint the returning officers as contemplated in the aforscited act, and the said returning officers thus appointed shall be required to make their returns within two months from and after the date of their appointment.

DAVID S. KAUFMAN,

Speaker of the House of Representatives.

DAVID G. BURNET,

President of the Senate.

Approved December 13th, 1839.

MIRABEAU B. LAMAR.

AN ACT

To raise a Public Revenue by Direct Taxation.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That there shall be levied on the real, personal or mixed property within this Republic, as defined in this act, a direct tax, which shall be levied, assessed and collected in the manner and form as hereinafter provided.

Sec. 2. Be it further enacted, That there shall be appointed, in each county of this Republic, one Assessor, which appointment shall be made by the Commissioners of Roads and Revenue of the several counties, and each Assessor so appointed shall enter into a bond, with good and sufficient sureties, to the satisfaction of the Commissioners, conditioned on the faithful performance of his duties; which bond shall be required of each Assessor in duplicate, one of which shall be deposited in the office of the Clerk of the County Court, and the other forthwith transmitted to the Secretary of the Treasury; and it shall further be the duty of the Commissioners to administer to each Assessor appointed the oath prescribed for public officers, varying it to suit the duties required of such Assessor.

Sec. 3. Be it further enacted, That the appointment of Assessors, which, by the foregoing section, the Commissioners of Roads and Revenue are required to make, shall be made at the first meeting of the respective Commissioners in each of the various counties in this Republic in each year, and, if from any cause or motive whatever there should not be an Assessor appointed by the first Monday of March in each year, it is hereby made the duty of the Chief Justice of such county, failing to have a session of the Commisisoners of Roads and Revenue by the beforementioned first Monday of March, immediately thereafter or so soon as practicable, to make the appointment of Assessor for such county, and take from him the duplicate bond and administer the oath as provided in the foregoing section; Provided, That the Assessor shall be appointed in each county by the first day of May, in the present year.

Sec. 4. Be it further enacted, That all heads of families or other individuals recognized by the laws of this Republic as free, shall make out, or procure to be made out, a fair, full and complete inventory of all the taxable property belonging to them; and also, an inventory of all the taxable property held by them as guardians, executors, administrators, and another inventory of all taxable property in their names, and held by them as agents or attorneys of other persons, which inventory or inventories, (as the case may be,) shall be, by the party making it, or them, subscribed and sworn to before the Assessor of the respective county, who is hereby authorized to administer the following oath: "I, A. B., do solemnly swear, or affirm, that the inventory or inventories here presented, and which is (or are) subscribed by me, contains a full and complete record of all the taxable property belonging to me, (and when held as guardians, &c., or as agents or otherwise,) as also all taxable property which I hold as guardian, executor or administrator, or held by me, and in my name as agent or representative of another person, to the best of my knowledge and belief, so help me God!"

Sec. 5. Be it further enacted, That it shall be, and it is hereby made the duty of the Assessor in each and every county of this Republic, to give notice by posting up advertisements at three of the most public places within the limits of each Captain's beat; which notices must be so arranged, as to give at least ten days' notice in each beat, that he will attend on a particular named day or days at the mustering ground for said beats, (if any such exist,) and if not, at the most public and central, or convenient place in said beats, allowing at least two days at each beat, then and there to require and receive from each and every

person living within that beat, a full, perfect and complete inventory of all the taxable property belonging to, or which such person may own and possess in the county or Republic; also, an inventory of all taxable property consisting of lands, lots, stocks, negroes, horses and cattle, which such person may hold as guardian, executor or administrator; and a third inventory of all lands, lots, stocks, negroes, horses and cattle, which such person may hold and possess as attorney or agent of other persons; and such inventory or inventories, (as the case may be,) must be subscribed and sworn to before the Assessor, as provided in the foregoing section; and all persons failing to make returns and inventories of their property as aforesaid, shall be deemed delinquents, and shall pay the Assessor ten dollars as a compensation for having to go to the place of residence of such delinquent for a list of his or her property; Provided, That in case of sickness or absence on business from the county, of any person having or owning taxable property as aforesaid, it shall be lawful for such person, to send his inventory or inventories of such property, as hereinbefore provided, to the Assessor, which must be sworn to and subscribed before a Chief Justice of one of the counties of the Republic; And further provided, That if the list so forwarded be for the use of the Assessor of the county in which the person resides, who makes it, and is made within such county, it will be lawful to swear and subscribe to the same before any Justice of the Peace of the county aforesaid

Sec. 6. Be it further enacted, That if any Assessor shall go to the house, or usual place of abode of any person within his county, who hath in his or her charge any property, and not find such person at home, he shall leave a written notice at the place of residence of such person, requiring him or her to give in to him, on or before the day on which the Assessor is directed to finish receiving inventories, a list of his or her property, and if such person fail to comply with the requisitions of said notice, he or she shall be considered as a delinquent and shall be double taxed, according to the best information that the Assessor can obtain, provided, when any person holds taxable property in any other county than that in which he resides, he may send to the Assessor of such county, by means of an agent, or through a friend, a list of his property in such county subject to taxation, sworn to before and certified by some Justice of the Peace; and from such representation, or agency, no construction shall be given, that it comes under the class of those which are, by this law, made subjects of double taxation; and in like manner, a list of such property as he may hold under the heads of guardians, &c., and as attorney, contemplated in the foregoing section.

Sec. 7. Be it further enacted, That the County Recorder shall furnish a register of all titles to lands which were granted under former Governments, and transfers of lands which were made under the same Governments, which titles may be of record, or which may have been filed for record in their respective counties, on the first of January of each year; which register shall state the name of the person to whom the land was originally granted, and as nearly as can be ascertained the present owner, the quantity of land expressed in the title, and if the title be a transfer-deed, and calls for an undivided interest, the amount of such interest must be expressed.

Sec. 8. Be it further enacted, That the Deputy Surveyors of every county shall make returns of all surveys made by them within three months from the date of survey, to the respective County Surveyors; and it is hereby made the duty of such County Surveyors to make a full and perfect register of all surveys, which have been recorded and filed for record, on the first of January of each year; which register shall, on the first day of February of each year, be delivered by the County Surveyors to the County Court of their respective counties; which courts shall during the first week in the month of February of each year, hand over to the Assessor of such county, the registers of land made out by the County Recorders, and also, the registers made out by the County Surveyors; whereupon the Assessor shall immediately proceed to class the land contained in the registers from the County Recorders, and value or estimate the same, bearing in mind that the lowest or minimum value of any such land is hereby declared to be one dollar per acre, and that the valuation of all land surveyed and returned by the County Surveyors, according to the registers, is hereby fixed at one dollar per acre as its minimum valuation, provided, that for the present year, the returns required for the deputy Surveyors, and from the County Surveyors shall be respectively made by them in time for the County Courts to hand them to the Assessors by the first day of June next ensuing.

Sec. 9. Be it further enacted, That the Assessor, so soon as he shall have received the inventories from the inhabitants of the county, as provided in the fourth section of this act, and also, the registers provided for in the foregoing section, he shall compare the returns made of the lands by the various individuals, who have handed in their inventories, with the registers, received from the County Courts, and if such returns shall not agree with the reports in the registers, and the difference shall be so marked and so great as to induce a belief that there has been an attempt

to defraud the revenue, it shall be and it is hereby made the duty of the Assessor to value and estimate the lands from the registers and assess the tax from them; and all persons who shall have given in a false list of his or her land, shall be considered as delinquents, and shall pay a double tax, to be levied and assessed by the Assessor, who shall also report to the County Courts all such persons so offending, in order that such further proceedings may be had against them, as the nature of the offence requires. It is further made the duty of such Assessor to form from the registers and from the inventories of various persons, a general inventory of all the taxable property of each individual in the county; which general inventory must express the quantity of land owned by such individual, and its appraised value, and also that which such individual holds as guardian, executor, or administrator, and also, that which such individual holds as attorney or agent of another person, and upon the land owned by such individuals, after being valued, there shall be levied and assessed a tax of one half of one per centum on each dollar of valuation, and the same rate of per cent. shall be levied and assessed upon that which such individual holds as guardian, executor or administrator, unless the legal heirs of such land so held be non-residents of this Republic; in which event, there shall be levied and assessed a tax of one per centum on each dollar of valuation, and upon all land which such individual holds as attorney or agent for another, the Assessor shall levy and assess a tax of one per centum on the valuation; and all other property expressed in the general inventory shall have levied and assessed upon it the specific tax which this law explicitly defines.

Sec. 10. Be it further enacted, That it shall further be the duty of such Assessor to form and make out from the general inventory, provided for in the foregoing section, a list in alphabetical order, of the names of each and every person in the county, from whom taxes are due, and on a line with the name of the person in separate columns, the quantity of land in acres under titles, the quantity in acres surveyed, number of negroes, neat cattle, horses and mules, and the appraised value of the land under titles, and one column for miscellaneous articles, one column showing the gross amount and value of tax due from such individual; on a line directly under, must appear the land and property held by such individual as guardian, executor, or administrator, expressing value and quantity, as in the first instance; and underneath that line must be set forth the land, quantity and value, held by such individual as attorney or agent for another person, so that in the event of any individual holding property

in the three different manners contemplated by this law, there shall be a separate line for each class respectively, and each to show the assessor, to draw off three perfect and exact copies of such list, to full amount of taxes due. It is further made the duty of the Assessor of each of which copies of such list he must affix a certificate, that the list contains truly and faithfully a representation of all the tax due from each person in conformity with the general inventory as made from the inventories of the parties and the registers, and that a just and true estimation of the tax has been made in conformity with the provisions of this act, one of which copies so certified he shall forthwith forward to the Secretary of the Treasury, one shall be handed over to the Sheriff of the county, and the third shall be posted up in the court house and preserved for the inspection and examination of every person.

Sec. 11. Be it further enacted, That it is hereby made the duty of the Sheriff of the county, on receiving from the Assessor the list provided for in the foregoing section, to give notice, at ten or more public places in the county, that the tax due from the citizens of such county will be receivable, during the three months next ensuing, at his office in the county, and it is hereby made the duty of every person, resident of any particular county of this Republic, owning or representing, in the manner contemplated in this law, taxable property situated in any other county, or counties of this Republic, to pay the taxes which may be levied and assessed on such property, under the provisions of this act, in the county respectively where such property may be and is situated.

Sec. 12. Be it further enacted, That, during the month of November, the Sheriff of each and every county throughout this Republic, shall make his returns to the Secretary of the Treasury, and pay over to him the amount of monies which he may have collected for taxes due to the Republic, under the provisions of this law, and all those who shall not have paid their quota of taxes to the Sheriff of the respective county, when it may be due, by the time in which, under this section it is made the duty of the Sheriff to make returns to the Secretary of the Treasury, shall be considered as delinquents, and a list of them shall be made out, expressing names and amount of taxes due by each, from the list in possession of the Sheriff (which he received from the Assessor,) by an officer of the Treasury Department, under the direction of the head of that Department, and to which shall be affixed a certificate of the Secretary for its correctness, and shall then be handed to the respective Sheriff, (and a copy of it shall be published by order of the Department) whose duty it shall be, within one month after he shall have received it

from the Department, to present and deliver it to the clerk of the District court; and it is hereby made the duty of said clerk, on receiving such list of delinquents, to issue execution against the property of such delinquents, when the amount of tax due requires the intervention of that court; and such execution shall be handed to the Sheriff, who shall levy upon the property assessed or on any other property belonging to such delinquent, for double the amount of the tax and costs, from the list of delinquents furnished by the Treasury Department, the Sheriff shall draw a list of all those delinquents, from whom the amount of tax due, comes within the jurisdiction or cognizance of a Justice of the Peace, and deliver the same to that officer, who, upon receiving it, shall immediately issue execution against the property of such delinquents, and hand the same over to the Sheriff, who shall levy, as provided for under the executions to be issued by the District Courts, for double the amount of tax and costs; and if the property levied upon, under the provisions of this section, be real estate, it shall be advertised in a public newspaper for forty days previous to the day of sale; should execution be levied on personal property, it shall be advertised at three or more public places in the county for twenty days previous to the day of sale, and then sold for the amount of double taxes and costs; and if the property seized and sold be real estate, it may be redeemed at any time within two years, on payment being made of double the amount of purchase money, subsequent tax paid, and interest thereon at twenty per cent. per annum as damages and penalty.

Sec. 13. Be it further enacted, That from and after the first day of March next ensuing, there shall be collected from the owner or proprietor of any theatre or theatrical establishment in this Republic, an annual tax of two hundred dollars. Every person who shall exhibit or cause to be exhibited for emolument or pay, any museum, wax-work, feats of activity or slight of hand, or any diversion of this character, under any name whatever, shall first obtain from the clerk of the County Court a license therefor, for which he, she, or they, shall pay the sum of fifty dollars. From the owner or proprietor of every public race track, there shall be collected an annual tax of one hundred dollars. For every horse kept exclusively for racing, the sum of ten dollars; for every stud horse or jackass which may stand for the season, the price for which such stud horse or jack may stand by the season; for every horse kept exclusively for the saddle or pleasure carriage, one dollar each; for all other horses, excepting four for each farmer, or for each laboring or working man, who uses his horse in any mechanical art or branch of industry,

twenty-five cents per head; for all mules, (excepting four,) twenty-five cents per head; for all neat cattle (excepting twenty-five,) over and above the number of twenty-five, ten cents per head; for all pleasure carriages, under every name and denomination whatsoever, one dollar for each wheel. There shall be collected from the owner or proprietor of each and every unimproved lot in any incorporated city or town an ad valorem tax of one half of one per cent. on the valuation of such lot; provided, that no lot, in an incorporated city or town, shall be valued at less than fifty dollars, and all unimproved lots, in any unincorporated city or town, the same rate per cent. on the valuation, provided, that no lot shall be estimated at less than twenty five dollars; and upon all improved lots, in any incorporated or unincorporated city or town, the sum of fifty cents shall be paid on every hundred dollars value of such lots, buildings or other improvements thereon, to be estimated, by the person giving in the same, upon oath. There shall be collected an annual tax on all negroes, to be classed as follows:—one dollar per head on all under the age of fifteen years; three dollars per head on all from fifteen to fifty years of age; and two dollars per head on all over fifty years of age. On all gold watches used or kept for use, the sum of three dollars each; and on all silver watches used or kept for use, the sum of one dollar each; on all clocks kept for use, the works of which are made of metal, three dollars; on all clocks of any description, the works of which are not made of metal, one dollar each; on money loaned at interest, for every hundred dollars, fifty cents per annum: on every pack of playing cards, sold, given away, loaned or otherwise disposed of, three dollars; and a poll tax of one dollar on every white male of this Republic, twenty-one years of age and over, shall be collected. And all money collected by clerks of the County Courts, for licences, under this section, shall be, by them, paid over to the County Treasurer, so soon as such officer shall be appointed.

Sec. 14. Be it further enacted, That each merchant who sells goods, wares and merchandise, at wholesale, shall pay, for each establishment, an annual license tax of one hundred dollars; each merchant or trader, who sells and disposes of goods and merchandise, at retail, shall pay a license tax of one hundred dollars per annum; and each wholesale merchant shall further pay the sum of twenty-five cents on every hundred dollars worth of merchandise sold by him, or by them, (when trading under a firm,) and each establishment, which such merchant may have; and each retail merchant, trader, or marchand shall, over and above the license tax of one hundred dollars, pay the sum of fifty

cents on every hundred dollars worth of merchandise, of every kind or description whatsoever, sold by him, her or them, in each and every establishment which he, she or they may have, estimating the year's term between the first of March of one year and the first of March of the year following; which estimate of amount of sales of merchandise shall be given in to the Assessor, by such wholesale or retail merchant, trader or marchand, under oath; and if the person or persons vending merchandise; shall refuse to give in a list of the amount of merchandise or goods sold, on or before the first day of June annually, he, she or they, shall forfeit and pay a penalty of one thousand dollars, to be collected by the Sheriff as other taxes are collected: and be it further provided, that all retailers of merchandise, who vend wines, or spiritous liquors, cordials, &c., in quantities of a quart and over, shall pay an extra license tax, of one hundred dollars, in the same manner as the first license; and for which they must take out a separate and distinct license: and for a license to sell wines, spiritous liquors or cordials, or either of them in quantities less than one quart, he, she or they shall be subject to the provisions of the law made and provided for such cases. For each billiard table, there shall be paid a license tax of two hundred and fifty dollars per annum; each nine or ten pin alley, or any game of that kind, shall pay a license tax of two hundred dollars per annum. Each public inn or tavern, where persons are entertained and lodged for pay or hire, within the limits of any incorporated city or town, shall pay an annual license tax, of one hundred dollars: each public boarding-house shall pay a license tax of fifty dollars per annum; provided, that no boarding-house shall come under the denomination of "public boarding-house," when there shall not be a greater number of persons than five entertained with boarding, for pay or hire; and if, at any of the beforementioned establishments, the privilege of selling, or otherwise disposing of wines or liquors, shall be practised or desired, in quantities less than one quart, there shall be exacted and required the tax which the law provides in such cases; but if the quantity of wine or liquor sold, or otherwise disposed of, be a quart and upwards, there shall be exacted in addition to the license for boarding and entertaining, a tax of one hundred dollars: each keeper of a cook-shop, oyster-house, or restaurat, shall pay a license tax of fifty dollars per annum; and if the additional privilege of retailing wines and liquors be required, the additional license tax shall be exacted as provided in the cases of taverns, inns and boarding-houses: and all persons neglecting or refusing to comply with each special provision of this section, when appli-

cable, shall forfeit and pay a penalty of one thousand dollars, recoverable as in all cases of forfeiture and penalty, under the provisions of this act.

Sec. 15. Be it further enacted, That there shall be levied and collected a tax of two per centum on all goods, wares and merchandise sold at auction, to be estimated on the amount of sales; subject however to the following exceptions, to wit: when sales of goods, wares or merchandise are made, pursuant to or in execution of any rule, order, decree, sentence or judgment of any court of this Republic, or when made by virtue of an assignment for the benefit of creditors, or when made by or in behalf of guardians, executors or administrators, or made pursuant to any law of the Republic for the collection of any tax, duty, fine, penalty, or goods confiscated to the use of the Republic, or when sales are made by auction of ships or vessels, their tackle, apparel, furniture or cargoes thereof, which shall be wrecked or stranded on the coast of this Republic, and sold for the benefit of insurers, underwriters, or proprietors thereof, the tax provision shall not extend; on all sales of real estate, town lots, whether in incorporated or unincorporated cities or towns, which shall be made at public auction, there shall be collected from the auctioneer the following rates of tax: First,—When the rate of commission charged is one and one-fourth per centum, twenty-five cents on every hundred dollars of the amount of sales: Second,—When the rate is two and a half per centum, fifty cents on every hundred dollars: Third,—When the rate is three and three-fourths per centum, seventy-five cents on every hundred dollars: Fourth,—When the rate is five per centum, one dollar on every hundred dollars; and the same rate of tax shall be exacted, be the rate of commissions charged by or allowed the auctioneer, what they may; and if the auctioneer or crier be an irresponsible person, the company, owner, proprietor or agent of such real estate, or town lots as aforesaid, shall pay one dollar on every hundred dollars of the amount of sales; and in default thereof, shall forfeit and pay a penalty of two thousand dollars, to be collected by the Sheriff of the county, as tax collector, for the use and benefit of the Republic, in the most summary manner provided by law; for which purpose the clerk of the District or County Court shall issue execution, to be levied as provided in other cases of forfeiture and seizure. All goods, wares and merchandise, sold by auctioneers in this Republic, at private sale, shall be subject to the same tax as if the same were sold at public auction; and it is hereby made the duty of every auctioneer, to furnish on or before the first Monday of October in each year, (in duplicate,) a correct

statement of all sales of merchandise and of real estate, and of town lots, made by him, subject to taxes under this law, for the twelve months preceding, and hand the same to the Assessor; which duplicate statement shall be sworn to by such auctioneer and his clerk, before the Chief Justice of the county or a Notary Public, or in the absence of both these functionaries, before any Justice of the Peace of the county in which he may reside: on receiving such duplicate statement from the auctioneer, the Assessor shall hand one to the Sheriff of the county and transmit the other to the Secretary of the Treasury; on failure of any auctioneer to furnish the statement aforesaid, at or before the time required, he shall forfeit and pay for the use of the Republic, the sum of one thousand dollars; and if the Assessor has good reasons for believing that a statement so furnished is false, and does not contain the true and fair estimate of sales, he shall cite such auctioneer to appear before the Chief Justice of the county, or before a Justice of the Peace, if there be no Chief Justice, and present and display his books of accounts and record of sales; and should it appear on examination, that the statement rendered be false, such auctioneer shall for that offence, be subject to a penalty of one thousand dollars, and besides suffer such other punishment as the District Court may inflict for the offence committed: and it is hereby made the duty of the clerks of the County Courts, on application of the Sheriff of such county, to issue execution for the beforementioned penalties, which are to be levied and collected as provided in other cases; and be it further provided, That the statement required from the auctioneer on the first Monday in November next, shall comprise the time in this year, after the passage of this act.

Sec. 16. Be it further enacted, That all real estate agents or brokers, ship brokers and merchandise brokers, shall severally pay a license tax of one hundred dollars, and any individual or firm who shall exercise more than one of the foregoing professions, shall pay a separate tax for each profession; and every money broker shall pay a license of one hundred dollars, and in addition, three dollars on every hundred dollars which they may loan; and all persons who may fail to comply with the provisions of this section, shall forfeit and pay a penalty of one thousand dollars.

Sec. 17. Be it further enacted, That every hawker or pedler shall pay a license tax of twenty-five dollars to the county court in each county where he or she may vend goods, wares or merchandise; barter, exchange or sell, either absolutely or for a limited time, any clock or clocks; and if any hawker or pedler

shall sell, barter or exchange any goods, wares or merchandise, without first taking out a license, and paying for the same, as provided in this law, he or she shall forfeit and pay the sum of five hundred dollars, to be recovered in an action of debt, before any court having competent jurisdiction; one half to the use of the Republic and the other half to the use of the informer; and all bonds, notes or promises, made to any hawker or pedler, as aforesaid, the consideration of which shall be for any clock or clocks, or other goods, wares or merchandise, of any kind whatsoever, shall be utterly void, unless the party vending the same shall have first procured a license as aforesaid; and it is hereby made the duty of all Sheriffs, Constables and Justices of the Peace, whenever they see any hawker or pedler vending goods or merchandise within the limits of the counties in which such officers reside, to demand of such hawker or pedler the production of his or her license, and on failing to produce it, he or she shall forfeit and pay the sum of fifty dollars, to be recovered before any court having jurisdiction of the same, in addition to the former penalty; one half to the use of the informer, and the other half to the use of the Republic: and further, to arrest and bind over for appearance at the respective district court, all hawkers and pedlers caught selling or disposing of merchandise without license.

Sec. 18. Be it further enacted, That each and every Sheriff of the various counties of this Republic, who by this law is constituted and appointed collector of taxes for the use and benefit of this Republic, under the provisions of this act, shall previous to entering upon the duties of tax collector, make, execute and deliver to the Chief Justice or to the County Court of the respective county, duplicate bonds with good and sufficient sureties to the satisfaction of the Chief Justice of the county, which bonds shall contain a penal sum or express in obligation an amount which shall be equal to the whole amount of taxes due in the respective county of each sheriff, conditioned upon the faithful performance of his duty as tax collector, one of which bonds so made and executed, shall be by the Chief Justice transmitted to the Secretary of the Treasury; said duplicate bonds shall be in manner and form as follows, to wit: Know all men by these presents, that we, A. B., as principal, and C. D. and E. F., &c., as sureties, are jointly and severally bound unto the President of the Republic of Texas, in the just and full sum of dollars, lawful money of this Republic; the object and intent of this bond and obligation, is to save and keep the Republic harmless from all loss or injuries, resulting from a dereliction of duty, or failure of strict performance and discharge

of duties by the said A. B., in his capacity of Sheriff and tax collector, under the provisions of a law passed the day of 1840; and in order that the government shall be fully and completely secured, and the responsibility of the parties to this bond manifest and certain, they hereby covenant and agree that **this bond and obligation** shall have all the force and effect of a judgment, in the same manner as it could, or would have, if it had been rendered in a regular adjudicated case by a competent judge, and not appealed from, and that it shall further operate, and have the force and effect of a tacit and implied mortgage, on the property of both principal and sureties; and in case of forfeiture, by the default of the said A. B., principal, rendering it necessary to seize upon the property of the parties to this obligation and bond, and execution be levied upon real estate belonging to the parties, the sale of any and all such real estate may and shall be made without the necessity of appraisement, and may be sold to the highest bidder, for cash, after forty days notice of sale shall have been given, and should execution be levied upon personal or mixed property, no appraisement shall be necessary, and it may be sold, for cash, to the highest bidder, after twenty days notice of sale shall have been given; and furthermore, the parties voluntarily relinquish the right to all laws or parts of laws, which might be plead in their favor, or which might create delay: therefore, should the said A. B., well and truly perform the duties required of and incumbent upon him as collector of taxes for this county, and shall pay over all monies, by him collected, for the use and benefit of the Republic under this law, to the Treasury Department, then this obligation shall be null and void, otherwise to remain in full force and effect.

Done in duplicate, at in the county of
this day of in the year of

Signed, sealed and delivered by the parties in duplicate before me.

A. B. [SEAL.]

C. D. [SEAL.]

E. F. [SEAL.]

Sec. 19. Be it further enacted, That each and every person within this Republic, who for the exercise of any profession, business or privilege, is by this law required to procure and obtain a license, shall make an application in writing to the Treasurer of the county in which he, she or they may reside, and in which such license is wanted, setting forth plainly and concisely the objects for which a license or licenses be required, and shall pay to the said Treasurer the amount and sum which this law

requires, shall be exacted as a license tax for the particular privilege, business or profession, practiced or desired to be practiced, held or obtained, or followed, as the case may be, which written application must be filed by the Treasurer, who upon receiving from the applicant in gold or silver, or the promissory notes of Government the amount requisite for the license or licenses, desired by such applicant, shall issue to him a receipt which shall express the sum paid and description or kind of money paid, and received by the Treasurer, and also declare what description of license or licenses the applicant desires and has paid for, and with such receipt the applicant shall apply to the clerk of the County Court, who, thereupon, shall issue to him the particular kind of license or licenses set forth in the receipt of the Treasurer as having been paid for, and the said clerk shall file such receipt as his voucher and authority for issuing or having issued such license or licenses; and it is hereby made the duty of the several clerks of the County Courts in this Republic, to keep a book in which shall be registered every license issued by them, which register shall express the name of the individual or firm in whose favor a license shall have issued, as also the character and description of license issued, and date of issue; and it is also made the duty of the Treasurer of the county to keep a register book and record the name of all applicants for license or licenses, the character and description of license applied for, amount of money paid in to him, and the date on which he issued a receipt to the applicant; and it is further made the duty of the Treasurer to pay over to the Secretary of the Treasury in all the month of November, the amount paid to and received by him for licenses; and at the same time to transmit or hand over to the Secretary of the Treasurer, a full, perfect and complete register of all applications to him made, expressing the names, and also the date of the issue of the receipt, and the amount received by him; and it shall be the duty of the clerk of the court aforesaid, to transmit to the Secretary of the Treasury a transcript of all licenses issued by him, expressing the names to whom issued, date of County Treasurer's receipt, and character and description of licenses issued; and it is hereby made the duty and obligation of both County Treasury and County Clerk, to exhibit the registers beforementioned to any citizen freeholder of their respective counties; and refusing to comply with a request for an exhibition of the books of register by any citizen freeholder, they shall severally, as the case may be, incur the penalty and forfeiture of fifty dollars, to be recovered before any judge having jurisdiction or cognizance thereof, on the complaint of any such freeholder, one half to the

benefit of the county and the other half to the benefit of any primary school in the county; and it is hereby further provided, That the Treasurers of the counties shall receive for the services which he may render in carrying out the provisions of this act, five per centum on the amount paid into his office by applicants for licenses, and the clerks of County Courts shall be entitled to receive three dollars for every license issued by them in conformity with the provisions of this act.

Sec. 20. Be it further enacted, That if any citizen or other person within the limits of this Republic, shall forge or counterfeit any license or licenses, or if any person be found practising and operating under a forged license, or using one in any way, or travel with such forged or counterfeit licenses, such person or persons shall forfeit the sum of one thousand dollars, one moiety thereof to him that shall prosecute and sue for the same, to be recovered before any court having competent jurisdiction thereof.

Sec. 21. Be it further enacted, That if any Assessor or Collector shall be sued for any matter or thing done in pursuance of the powers given in this act, he may plead the general issue, and give this act and the special matter in evidence.

Sec. 22. Be it further enacted, That the Sheriffs appointed under this law collectors of taxes, are hereby authorized and empowered to collect all arrearages of taxes that may remain unpaid to those who were formerly authorized to collect them, under the same regulations as are prescribed for the collection of taxes in other cases, on receiving therefor the necessary and proper instructions from the competent authorities for their action.

Sec. 23. Be it further enacted, That if any person or persons liable to pay taxes, may after being assessed, remove from the county in which he, she or they may have been so assessed, not having paid their taxes, the sheriff as tax collector of the county in which he, she or they may have been so assessed, is hereby required to send, certified under his hand, a transcript from his tax list, to the collector of the county where such delinquent or delinquents may be; and the Sheriff of such last mentioned county, as tax collector, is authorized upon such transcript, to proceed to make the money by distress and sale as provided in other cases, and immediately transmit the amount so made, to the Sheriff who sent the said transcript; for which services, the Sheriff making the said money shall receive five per centum as a compensation for his services.

Sec. 24. Be it further enacted, That the taxes imposed by virtue of this act, shall be preferred to all incumbrances and securities whatever; and if any person between the time of render-

ing a list of his taxable property to the Assessor, and the time at which the Sheriff as collector, is authorized to levy or make distress, shall be about to remove without the limits of his county, the Sheriff upon receiving information thereof, shall immediately make distress of the goods and chattels of the person about to remove, sufficient to satisfy the amount of taxes that he may owe, and sell the same, upon giving notice as hereinbefore directed; and all taxes assessed on any person or persons under this act, shall be a lien upon his real property, lying within the county in which the assessment was made, until the taxes be paid.

Sec. 25. Be it further enacted, That every Sheriff, who as tax collector under this act, shall sell any real estate to satisfy any tax imposed by this law, shall make and execute to the purchaser or purchasers thereof, a deed of conveyance immediately, which deed shall be good and effectual, both in law and equity; and in every such deed the Sheriff, as collector making the same, shall recite that the real estate thereby conveyed was sold for taxes, and the consideration; but no deed given in manner aforesaid, shall be recorded until the expiration of two years from the date thereof; but it may nevertheless, be proved; and if the person whose land has been sold, or his legal representative, agent or attorney, shall within the two years, tender to the purchaser, or his legal heirs, representative, or agent, and if such person be absent from the Republic, then to the Sheriff who sold the same, or to his successor in office, double the amount of purchase money, (or the amount of consideration,) and the amount which the purchaser may have paid for taxes on such real estate, and twenty per centum per annum as damages, penalty and interest thereon from the date of such payment until such tender be made, the deed given for such real estate thus sold and conveyed, shall be made void and be given up.

Sec. 26. Be it further enacted, That when any Sheriff as tax collector, shall have advertised for sale any lands or tenements to raise the taxes due, and such lands or tenements so advertised could not be sold for want of bidders, he may adjourn any such sale from time to time until the same shall be sold, and any sale made on an adjourned day shall be valid, as if the same had been made on the day fixed in the advertisement.

Sec. 27. Be it further enacted, That there shall be allowed to each Assessor as a compensation for his services, a commission of five per centum on the first two thousand dollars of the amount of taxes in his respective county, — three and one-half per centum on the next four thousand dollars, two per centum on

the next amount of six thousand dollars, and one per centum on the remaining balance of the amount of the taxes in each county respectively.

Sec. 28. Be it further enacted, That any Assessor who shall fail to return his tax list to the Treasury Department by the fourth Monday in July of each year, shall forfeit to the Republic the sum of one thousand dollars; and the certificate of the Secretary of the Treasury of such failure, directed to the Sheriff of the county wherein it may happen, shall have the force and effect of an execution, and the Sheriff shall proceed to distrain and sell as this law provides the property belonging to the Assessor or his securities, and shall account to the Secretary of the Treasury within three months after said certificate comes into his hands, or be liable, as under this law he is, for failing to pay over taxes collected; and in like manner shall the Assessor incur the penalty and forfeiture of one thousand dollars for each month successively that he continues to be a defaulter, to be recovered from him and his securities, as before provided.

Sec. 29. Be it further enacted, That if any Assessor or Sheriff, as tax collector, shall make a false return of any list of taxable property with a view to defraud the revenue, he shall forfeit and pay double the amount of the sum which it was his duty to return; and shall further be liable to a prosecution for fraud, and on conviction thereof, shall be imprisoned three months, and forever thereafter be rendered incapable of holding any office of profit, honor or trust in this Republic.

Sec. 30. Be it further enacted, That the Sheriff of each county of this Republic, shall receive, as collector of taxes under this act, a compensation for his services in the collection of the taxes, and paying them over to the Treasury Department, as is required of him under the provisions of this law, a commission of five per centum on the amount of taxes by him collected and paid over; and it is hereby made the duty of the clerk of the County Court of each and every county in this Republic, to issue execution upon the certificate of the Secretary of the Treasury when directed to him, and setting forth that the Sheriff, as collector, has failed to pay over any portion of the amount of taxes collected by him, or for the full amount of taxes of such county, should the Sheriff fail to make returns and pay any amount over; which execution the clerk shall put into the hands of the coroner, if there be one, if not into the hands of any constable, with instructions to levy the same upon any property of said Sheriff and his securities; and the said coroner or constable, as the case may be, shall proceed to sell, as this law provides, and

the bond entered into stipulates, the property of said Sheriff and his securities, and make the amount of money expressed in the execution, and pay the same over to the county court, subject to the order and disposition of the said Secretary of the Treasury.

Sec. 31. Be it further enacted, That the commissioners of roads and revenue, of each and every county of this Republic, are hereby authorized to levy and collect in their respective counties in each year, a tax for county purposes, which in no instance nor for any pretext shall exceed the one half of the tax levied in such county for the use of the Republic, for the same year; and further, the said commissioners are required to make such provisions for its collections as will be the most economical and least burthen-some to the inhabitants of the county; and they are hereby further required, to appoint a County Treasurer in each of their respective counties, and require from such Treasurer, a bond with sufficient and satisfactory security, conditioned upon the faithful discharge of his duties, and to prescribe the services to be performed by him, and prefix or establish the amount of salary or stipend to be allowed for such services; and further, to require such Treasurer to make a statement annually of all amounts of money confided to him, how disposed of, and annually to settle his accounts, in the manner and form and at the time which said commissioners may establish, which settlement must be made with them.

Sec. 32. Be it further enacted, That all clerks of County Courts, who at this time may be acting as County Treasurers, shall cease the exercise of all such functions, so soon as Treasurers shall be appointed by the board of commissioners of roads and revenue, as provided in the foregoing section of this act, and shall hand over to the respective Treasurers all monies, papers and documents belonging to such office, which may be under their charge.

Sec. 33. Be it further enacted, That there shall be collected a tax on every gallon of spiritous liquors distilled in this Republic, the sum of five cents per gallon, and every distiller of such liquors shall certify upon oath to the number of gallons distilled in his or her distillery; the said tax shall be collected as provided for the collection of tax in this Republic.

Sec. 24. Be it further enacted, That no Chief Justice, Associate Justice, Sheriff or Clerk of the County or District Court, shall be eligible to the office of Assessor of Taxes.

Sec. 35. Be it further enacted, That whenever any person shall desire to obtain a patent from the Commissioner of the

General Land Office, by virtue of any location and survey, upon any certificate issued by any board of Land Commissioners, it shall be his duty at the time of applying for the same, to furnish satisfactory evidence that the said land has been given in for taxation, and that the amount due thereon has been paid, and without such evidence no title or patent shall be issued.

Sec. 36. Be it further enacted, That at the time of applying for the title, if the tax has not been previously paid, the applicant may make payment to the Secretary of the Treasury of the amount due, whose receipt shall be sufficient evidence for the purpose abovementioned.

Sec. 37. Be it further enacted, That if the location is made in any depopulated county, where no assessment can be made the Secretary of the Treasury is authorized and required to estimate the same at the minimum price fixed by this act, and on payment thereof to give the corresponding receipts.

Sec. 38. Be it further enacted, That nothing contained in this act, shall be so construed as to authorize or require the appraisal of, or levying a tax upon any improvement made upon lands without the limits of any incorporated city or town, or any other property or thing not specially set forth in this act, or to prohibit the reception of any or all properly audited drafts against this Republic, for any and all taxes which may become due the Republic under the provisions of this act; Provided, That the person from whom such tax may be due, shall be required to present to the collector the amount due and no more, if required so to do by the collector, before a tender of such taxes shall be considered as having been made; And further provided, That it shall be the duty of each and every Sheriff to require the person paying any audited draft, to endorse his or her name on the back thereof, and if on the presentment of the same to the Treasury Department, it shall prove to be a forgery or counterfeit, the Sheriff shall levy execution on the property of the individual who may have given it to him, for double the amount thereof, in the same manner as herein provided for other defaults.

Sec. 39. Be it further enacted, That the headright lands of those who have been killed, or have died while in the service of the Republic, shall be exempt from taxation, so long as they are owned by the heirs of the deceased, or until such time as Congress shall otherwise direct.

Sec. 40. Be it further enacted, That all laws relative to direct taxation, which have heretofore been passed, except so far

as relates to the collection of taxes due under said laws, be, and the same are hereby repealed.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.

DAVID G. BURNET,
President of the Senate.

Approved 16th January, 1840.

MIRABEAU B. LAMAR.

AN ACT

To prevent Frauds and Fraudulent Conveyances.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That no action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer any debt or damage out of his own estate, or whereby to charge the defendant, upon any special promise, to answer for the debt, default or miscarriage of another person, or to charge any person, upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, slaves, tenements or hereditaments, or the making any lease thereof for a longer term than one year, or upon any agreement which is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof shall be in writing and signed by the party to be charged therewith, or some person by him thereunto lawfully authorized.

Sec. 2. Be it further enacted, That every gift, grant or conveyance of lands, slaves, tenements, hereditaments, goods or chattels, or of any rent, common or profit out of the same, by writing or otherwise, and every bond, suit, judgment or execution had or made and contrived of malice, fraud, covin, collusion or guile, to the intent or purpose of delay, hinder or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures, or to defraud, or to deceive those who shall purchase the same lands, slaves, tenements or hereditaments, or any rent, profit or commodity out of them, shall be from henceforth deemed and taken only as against the person or persons, his or her, or their heirs, successors, executors, administrators or assigns, and every of them whose debts, suits, demands, estates, interests, by such guileful and covinous devices and practices as

is aforesaid shall or might be, in anywise disturbed, hindered, delayed or defrauded, to be clearly and utterly void; any pretence, color, feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding; and moreover, if any conveyance be of goods or chattles or slaves, and be not, on consideration, deemed valuable in law, it shall be taken to be fraudulent within this act, unless the same be by will duly proved and recorded, or by deed in writing or other instrument acknowledged or proved, if the same deed or instrument of writing include lands also acknowledged or proved in such manner as conveyances of lands are, by law, directed to be acknowledged or proved, or if it be goods and chattles, or slaves, only then acknowledged or proved by two or more witnesses, and recorded in the manner as now established by law, or may hereafter be established for the recording of deeds of conveyances, of real estate in this Republic, or unless possession shall really and bona fide remain with the donee; and in like manner, when any loan of goods and chattles or slaves shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained by the space of three years, without demand made and pursued by due process of law on the part of the pretended lender, or when any reservation or limitation shall be pretended to have been made of a use or property, by way of condition, reversion, remainder or otherwise in goods and chattles, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to the creditors and purchasers, of the persons aforesaid so remaining in possession, to be fraudulent within this act, and that the absolute property is with the possession, unless such loan, reservation or limitation of use or property were declared by will, or by deed in writing, proved and recorded as aforesaid.

Sec. 3. Be it further enacted, That the second section of this act shall not extend to any estate or interest, in any lands, goods, chattles, slaves, or any rents, common or profit out of the same, which shall be, upon good consideration and bona fide, lawfully conveyed or assured to any person or persons, bodies politic or corporate.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved 18th January, 1840.

MIRABEAU B. LAMAR.

AN ACT

To provide for the Renewing of the Security of County Surveyors.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That hereafter, it shall be lawful for the security or securities of any County Surveyor, who may wish to be released from such security, to notify in writing, the Chief Justice of the county in which such County Surveyor may reside, that he or they wish to be released from further responsibility, and it is hereby made the duty of such Chief Justice immediately to notify the County Surveyor, that within ten days he is required to appear before him and enter into a new bond with securities conditioned in all respects, according to the provisions of the law, in such cases provided.

Sec. 2. Be it further enacted, That so soon as the County Surveyor thus notified, shall appear and give the bonds required by law, and the same is approved of by the Chief Justice, that he shall cause the same to be recorded in the county clerk's office, and the original forwarded to the Secretary of State. But in case, the County Surveyor thus notified, should fail to appear and give the necessary bond, the Chief Justice is hereby authorized and required forthwith to declare the office of County Surveyor, in such county, vacated, and immediately inform the Commissioner of the General Land Office of the same.

Sec. 3. Be it further enacted, That the above enactments shall apply in all particulars to the Deputy Surveyors of the different counties; Provided always, That twenty days notice shall be given to the Deputy Surveyor, and in case of said Deputy refusing, or neglecting to appear and renew his bond at the expiration of said notice, it shall be the duty of the County Surveyor to declare by public notice in writing, that the office of said Deputy is vacated, and shall, as soon as possible, proceed to appoint a Deputy to fill said vacancy.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved December 25th, 1839.

MIRABEAU B. LAMAR.

AN ACT

To prescribe the mode of Appointing District Attorneys, fixing the Term of their Offices, and their Salaries and Perquisites.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That, to carry into execution the fifth section of the fourth article of the Constitution of the Republic of Texas, the District Attorneys shall be appointed by the President, by and with the consent and advice of the Senate, for the term of two years, and shall be eligible to re-appointment.

Sec. 2. Be it further enacted, That the several District Attorneys shall reside within the District for which they may be respectively appointed, and any District Attorney, failing to reside within the District for which he may be appointed, for a longer time than three months at any one time, without the written permission of the Judge of his District, shall thereby vacate his office; and it shall be the duty of the Judge or any Chief Justice of a county, within the said District, to notify the President, of such non-residence, whose duty it shall be to fill such vacancy, if the District Attorney fails to render a satisfactory excuse for such dereliction of duty.

Sec. 3. Be it further enacted, That each district Attorney shall be entitled to receive a salary of twelve hundred dollars, to be paid quarterly from the Treasury of the Republic, and shall further be entitled to the following fees as perquisites of office; in cases of conviction where the judgment of the court shall be death, branding, whipping or imprisonment, the sum of 50 dollars; for every conviction of unlawful gaming, or for permitting the same in his house, one hundred dollars; for every conviction for any other felony, or offence, twenty dollars, to be paid by the person convicted; and it shall be the duty of the clerks to tax the fee aforesaid in the bill of costs, and when collected, the Sheriff shall pay the same to the District Attorney.

Sec. 4. Be it further enacted, That the term of office of all the District Attorneys of this Republic, shall commence on the fifteenth day of January, one thousand eight hundred and forty, and the said offices in the several Districts shall be considered vacant, at that time, and subject to be filled in the manner designated in this act.

Sec. 5. Be it further enacted, That the District Attorneys shall continue to receive five per centum on the amount of money recovered for the Republic, on any bond, recognizance, or oth-

er obligation, where suit has to be brought for the same, but they shall not receive any other fee of office, than such as herein allowed; and any district Attorney, violating the provisions of this act, shall be deemed guilty of a high misdemeanor, and on conviction, shall be dismissed from office.

Sec. 6. Be it further enacted, That whenever any vacancy shall happen either by the death, resignation, or removal of any of the District Attorneys of this Republic, and it shall not be filled by appointment made by the President; it shall be the duty of the Judge of the District, in which such vacancy shall happen, or the Judge holding the court of the District, to appoint a District Attorney, pro tem.; who shall have all the powers and authorities, receive the same fees and perquisites of office, and be subject to the performance of all the duties of the office, and shall be deemed to be in office, until such office shall be filled by the appointment of the President, according to the provisions of this act, all laws to the contrary notwithstanding.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved January 14th, 1840.

MIRABEAU B. LAMAR.

AN ACT

To prescribe the method of proceeding to obtain the benefit of the writ of Habeas Corpus.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That if any person detained in custody, whether charged with a criminal offence or not, shall by himself, or by some other person in his behalf, apply to any District Court, or to the Supreme Court of this Republic, or in vacation, to any Judge thereof for a writ of habeas corpus, and shall show, by affidavit or other evidence, probable cause to believe that he is detained in custody, without lawful authority, it shall be the duty of the court or Judge, to whom such application shall be made, forthwith to grant the writ, signed by himself directed to the person in whose custody the applicant is detained, and returnable immediately before such court or Judge, or either of the said courts or Judges; Provided

always, That whenever it shall appear necessary, the court or Judge, granting the writ, shall previously require bonds, with sufficient security executed in such a manner, and in such a penalty as such Judge or court shall prescribe, conditioned for the payment of such charges as may be awarded against the prisoner, and that he will not escape by the way. Every bond so executed shall be recorded, with the other proceedings in the case as hereinafter provided for, and may be sued on in the name of the person, to whom it is made payable for the benefit of any person really interested therein.

Sec. 2. Be it further enacted, That whenever any such writ shall be served on the officer or other person to whom it is directed, or in his absence from the place where the prisoner is confined, on the person having the immediate custody of the prisoner, it shall be the duty of him, on whom the writ shall be executed without delay, to bring the body of the prisoner, or cause it to be brought before the court, or Judge before whom the writ is made returnable, or in the case of the absence of such court or Judge, before any of them, and at the same time to certify the cause of the detainer of such prisoner.

Sec. 3. Be it further enacted, That any person failing to return the writ so served upon him, with the cause of the prisoners detained, or to bring the body of the prisoner before the court or Judge, according to the command of the writ for three days after such service, or when the prisoner is to be brought more than twenty miles for so many days more as will be equal to one day for every twenty miles of such further distance, shall forfeit and pay to the prisoner the sum of fifty dollars, and all damages in which the prisoner may suffer, in consequence of such illegal detainer, for each day of failure; the right to recover which shall not cease by the death of either or both of the parties.

Sec. 4. Be it further enacted, That it shall be lawful for a Judge, in vacation, to take the same steps to enforce obedience to any writ of habeas corpus, as may be taken in term time, by the court, having jurisdiction of such writs.

Sec. 5. Be it further enacted, That the court or Judge, before whom the prisoner shall be brought, shall without delay, proceed to inquire into the cause of his imprisonment, and shall either discharge him, admit him to bail, or remand into custody as the law and the evidence shall require; and shall moreover, either award against the prisoner the charges of his transportation, not exceeding nineteen cents per mile, and the costs of the proceedings, or shall award costs in his favor, or shall award no costs or charges against either party, as shall seem right; the

clerk of the court, in the office of which the proceedings shall be recorded, may issue execution for the costs and charges so awarded by a judgment rendered in vacation, in the same manner as if the judgment had been rendered in term time.

Sec. 6. Be it further enacted, that the return made to such writ shall not hereafter be taken to be conclusive as to the facts stated therein but it shall be competent for the Judge or court, before whom such return is made, to receive evidence in contradiction thereof and to determine the same as the very truth of the case shall require.

Sec. 7. Be it further enacted, That in vacation, the Judge shall have the same power to compel the attendance of a witness to give evidence upon a trial as a court would have in term time; and whenever, either in term time or in vacation, it shall be inconvenient to procure the personal attendance of a witness, his affidavit taken upon reasonable notice to the adverse party, may be received in evidence.

Sec. 8. Be it further enacted, That the proceedings and judgments, shall in all cases, be entered of record; if they be had in vacation before the Chief Justice of the Supreme Court, they shall be signed by him, certified to the clerk of the Supreme Court and entered with the record of said court; if before a Judge of the District Court in vacation, they shall, in like manner, be signed by the Judge, certified and entered among the records of the District Court of the county in which the judgment shall be rendered, whenever either party shall require it upon the trial, the court or Judge shall cause to be made part of the record, all the material facts proved; the clerk shall be allowed the same fee as is allowed by law, for making up complete records of causes after final judgment, to clerks of the District Courts which fee shall be charged to the prisoner and taxed in the bill of costs, when costs are recovered by him.

Sec. 9. Be it further enacted, That the judgment so entered of record shall be conclusive, and no person remanded by such judgment, whilst the same continues in force, shall be at liberty to obtain another habeas corpus for the same cause, or by any other proceeding, to bring the same matter again in question.

Sec. 10. Be it further enacted, That any person committed to prison in custody of any officer for any criminal matter shall not be removed from thence into the custody of another officer, unless it be by habeas corpus, or some other legal writ; or when the prisoner shall be delivered to the constable or other inferior officer, to be carried to some common gaol, or shall be

removed from one place to another in due course of law, in order to his discharge, or trial, or in case of sudden fire, or infection, or other necessity.

Sec. 11. Be it further enacted, That all laws now in force, in any manner, conflicting with the provisions of this act, be and the same are hereby repealed.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved 14th January, 1840.

MIRABEAU B. LAMAR.

AN ACT

Altering the several acts to raise a Public Revenue by Impost Duties.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That from and after the thirtieth day of April, one thousand eight hundred and forty, in lieu of the duties now imposed by law, on the importation and introduction of all goods, wares and merchandise into this Republic, there shall be levied, collected and paid an ad valorem duty of fifteen per centum, except on such articles as may by this act, be made objects of specific duties; which specific and ad valorem duty of fifteen per centum shall be levied, collected and paid, in conformity with such provisions and regulations as shall be defined and set forth in this act; and all laws and parts of laws heretofore enacted, which may contravene the intent and operation of this law, shall be repealed, except so far as may be necessary for the recovery and collection of all duties which shall have accrued under said laws; and for the recovery, collection, distribution and remission of all fines, penalties and forfeitures which may have been incurred under the same; Provided, That books of every description shall be admitted free of duty.

Sec. 2. Be it further enacted, That all duties accruing to this Republic under this act, and which may be levied and assessed on goods, wares and merchandise imported and introduced into the territory of the Republic, shall be paid to the Collector of the port, district or station, in cash, at the time of such importa-

tion, on proper and lawful entry thereof being made to the Collector or proper officer of the customs, which cash payment must be made in gold or silver, or in the (Treasury) promissory notes of this government; and it shall not be lawful for the Collector, or any officer of the customs to deliver or permit the delivery of any goods, wares or merchandise to any consignee, agent or proprietor thereof, except in the manner herein provided, unless the amount of duties thereon accruing shall first have been paid to the Collector or proper officer of customs appointed by such Collector to receive the same; and in case the owner, proprietor, agent or consignee of goods, wares and merchandise imported or introduced into this Republic, shall not be prepared to pay the duties, or any part thereof to the proper officer of customs as aforesaid, it shall be and it is hereby made the duty of the Collector of the port or district, in which such goods, wares and merchandise may have been so introduced or imported, to have the same conveyed to some warehouse or storehouse, (where there does not exist a public warehouse,) to be designated by the Collector, there to remain until the duties be paid, at the expense and risk of the owner or consignee, under the care of some proper officer; Provided always, That it shall be lawful and is hereby made the duty of the Collector or proper officer of customs to deliver to the owner, proprietor, agent, or consignee a portion or part of such goods, wares and merchandise, if the duty be previously paid on such portion or part delivered, and the remainder stored as aforesaid; or if the owner or consignee of any goods, wares or merchandise, shall be desirous to deposit a portion of them with the Collector to secure the amount of duties due upon the whole, it shall be lawful for the Collector to accept of such deposit, first satisfying himself, either by personal examination, or by means of and a report from an inspector or other officer of the customs, that the portion of such goods, wares and merchandise are free from damage or other injury, and are, by their invoice value, worth treble the amount of duties due upon the whole; which goods so deposited shall be kept by the Collector with due and reasonable care, at the expense and risk of the party or parties, on whose account they have been so deposited; and if at the end of three months from the date of entry of such goods so deposited, the amount of duties due, for which they were pledged, be not paid to the Collector, so much of said deposited goods, as may be necessary, shall be sold at public sale for cash, in gold or silver, or promissory notes of the Government, and after deducting the charges of storage and other incidental to the sale, the proceeds shall be applied to the payment of the amount of duties for which they were deposited, and the

overplus arising on such sale, and the residue of the goods so deposited, if any there be, shall be delivered to the person or persons by whom such deposit was made, or to his, her or their legal representatives.

Sec. 3. Be it further enacted, That within twenty-four hours after the arrival of any ship or vessel, from any foreign port or place, at any port of this Republic, where an officer of the custom resides, or within any harbor, inlet or creek thereof, if the hours of business will permit, at the office of the principal officer of the customs at such port, or as soon thereafter as the said hours will permit, the master or other person having the charge or command of such ship or vessel shall repair to the said office and shall make report of the arrival of said ship or vessel, to the said chief officer of the customs; and within forty eight hours after such arrival, shall make a further report, in writing, to the Collector of the District, which report shall contain all the particulars of a manifest, and present the marks, numbers, and contents of all the different packages or parcels of goods on board such ship or vessel, and the particulars of such goods as are stowed loose to the best of his knowledge, and of the place or places where such goods were respectively taken on board, as also the name and burthen of such vessel, and the names of the respective consignees; which written report shall be made previous to discharging any part of the cargo of such ship or vessel, and sworn to or affirmed by the master or person in command before the Collector of such port; in default of which, a penalty of five hundred dollars shall be enforced and collected by said Collector, for the benefit of this Republic, and all captains or masters of vessels wilfully making, or returning false reports or manifests with an intent to defraud, shall, in addition to a fine of one thousand dollars, to be exacted by the Collector, be thereafter incompetent to enter or clear a vessel in any of the ports of this Republic, and both master and vessel held accountable; and all persons neglecting or evading, failing or refusing to comply with the provisions of this section, whether citizen or alien, shall be deemed as smugglers and treated accordingly.

Sec. 4. Be it further enacted, That each consignee shall be required to make duplicate entries of all goods and merchandise to him consigned, which entries shall contain at length the marks and numbers of packages, together with their contents, quantities and value; and it shall further be the duty of such consignee, to furnish and hand to the Collector, the original invoice or invoices of goods and merchandise to him consigned, or

by him imported; which invoice or invoices must have attached thereto, the certificate of the Consul of this Republic; resident at the port where such goods and merchandise were purchased, or from whence they were shipped: which certificate must clearly and expressly set forth and declare that the prices of each and every article in such invoice or invoices are the full, just and current prices of such articles at such port at the date of said certificate; and all goods and merchandise imported into this Republic, being from a port where a Consular agent of this Government resides, unaccompanied by an invoice so certified, shall forthwith be seized and confiscated from the fact of such omission; and the amount of the proceeds of sales of such goods and merchandise shall be returned and paid into the Treasury by the Collector; and it shall also be the duty of the Collector or officer appointed under him, to take an account of all goods so imported; and all goods and merchandise found over and above the quantity represented in the entries, shall be confiscated for the use and benefit of the Republic; and it shall further be the duty of each consignee to take and subscribe to the following oath, in presence of the Collector:—"I, A. B., do solemnly, sincerely and truly swear, (or affirm,) that the entry now subscribed with my name and delivered by me to the collector of

contains a just and true account of all the goods, wares and merchandise imported for sale, or intended to be landed in this District, for me or on my account, or on account of any house of trade or partnership, in which I am concerned in this District, or which actually came consigned to me, or to any house in which I am concerned; or, (if the entry be made by an agent,) imported by or consigned to () and intended for sale, or to be landed in this District, in the (insert name and denomination of vessel) whereof

is master, from , that the said entry contains a just and true account in (insert the denomination of money in which the invoices and entries are made) of the cost thereof, including all charges; that the invoice or invoices, and bill or bills of lading now produced by me are the true, genuine and only invoices and bills of lading by me received of said goods, wares and merchandise, imported or consigned as aforesaid, and the only invoices by which I have been charged, or for which I am to account, and that they are in the exact state received by me, nor do I know of any other invoices or account of said goods, wares or merchandise than those produced. I do further swear (or affirm) that if I discover hereafter any other or greater quantity of goods, wares or merchandise than is contained in the entry aforesaid, I will immediately and without delay, report the same to

the Collector; or any invoice varying the quality, quantity and price, than those now exhibited, I will immediately report the same to the Collector of this District. I also swear (or affirm) that nothing has been concealed or suppressed in the entry aforesaid, whereby to avoid the just payment of the duties imposed by the laws of the Republic of Texas, to the best of my knowledge and belief, so help me God."

Sec. 5. Be it further enacted, That in case any goods or merchandise, shall be laden on board of any ship or vessel at any place or port where there does not exist a Consular agent of this Republic, it shall be lawful to admit and receive the invoices of all such goods and merchandise, if accompanied by a certificate of two reputable merchants, resident in such place, and of a Notary Public or Judge under their seal of office, accrediting the respectability of such merchants, which certificate must clearly set forth and declare that the prices of such goods and merchandise are the just, full and current prices of each and every article expressed in the invoices, at such place or port on the day of date of said certificate. And whenever any goods and merchandise shall be introduced into the territory of this Republic from a country or place where this Government has not a Consular agent, and the invoices or bills of parcels of such goods and merchandise shall be unaccompanied by and with the certificate of two merchants as hereinbefore provided for, or being so accompanied, the Collector is induced to believe that prices have been put or affixed to the articles much below their cost and value, with an intent to defraud the revenue and evade the just and proper action of this law, it shall be and it is hereby made the duty of the Collector of customs where such goods and merchandise may be so introduced, to nominate and appoint two merchants, citizens of this Republic and residents of such place, to examine and appraise every piece, part and particle or quantity (if in bulk) of all such goods and merchandise, and thereupon to issue in writing a certificate of such appraisement; specifying minutely every article and the value which they have affixed to the same, as its cost and value at the place from whence it was shipped, or at which it was purchased, and upon such estimated or appraised value, adding thereto such charges as may be expressed in the invoice or invoices, and if no charges be expressed, such as they may deem just and proper to affix, the Collector shall assess, levy and collect, for the use of the Republic, fifteen per centum as provided for in the first section of this act; and it shall further be the duty of the Collector of any and every port or place in this Republic, when such appointment may become necessary, to allow

twenty-five dollars per day for each merchant appointed as appraiser for every day on which they may be so employed, which amount shall be exacted by the Collector from the consignee, owner or proprietor of such goods and merchandise, previous to the delivery of such goods, and shall then be paid by the Collector to the said appraisers.

Sec. 6. Be it further enacted, That under the directions and instructions of the Secretary of the Treasury, every Collector of the customs shall have authority to employ, within his district, such number of proper persons as inspectors of the customs as he shall judge necessary, who are hereby declared to be officers of the customs; and the said inspectors, before they enter on the duties of their offices, shall take and subscribe before the Collector appointing them, an oath, diligently and faithfully to execute and discharge the duties of inspector, and to use their best exertions and endeavors to prevent and detect frauds and violations against the revenue laws, and further to support the Constitution of the Republic, and it shall be the duty of such inspectors, under instructions from the Collector, in superintending the unlading or discharging of any ship or vessel, to compare the quantities, marks and numbers of each hogshead, cask, barrel, box, bale or other description of package or packages whatsoever, with the quantities, marks and numbers expressed in the invoice or invoices, and see if they agree in every particular, and also under the instructions of the Collectors, to open and inspect such packages of merchandise as he may direct from any invoice, and compare the contents with the description expressed in such invoice, and report the result of such examination to the Collector, prior to the delivery of such goods, wares or merchandise to the consignee, owner or proprietor thereof; and the Collector shall allow such pay and salaries to said inspectors as prudence shall direct, under a proper consideration of the services performed by such inspectors.

Sec. 7. Be it further enacted, That it shall be and is hereby made the duty of each and every Collector of customs within this Republic, whenever the inspectors shall report to him that there is evident and manifest fraud, whether in the description, quality or quantity of goods or merchandise in any package, and being different in quality or quantity from what is set forth in the invoice or invoices, or where the package is represented by the invoice to contain goods or merchandise of a particular kind or quality, and a different class, kind or quality of goods be found in the package, forthwith to call upon two respectable merchants, residents of the place, or upon two respectable citizens, who shall

with said Collector, examine and compare such package or packages, and their contents with the character and description given of them in the invoices, and if it shall appear to the satisfaction of the Collector and appraisers that the goods or merchandise in such package or packages are different in kind, description, quality or quantity from such description, quality or quantity represented in the invoice or bill or parcels, and that the variation is so great as materially to effect and change the value and estimation, and that it is evident that the misrepresentation of the class, description or quality of such goods was made with a view to defraud the revenue, all such goods, wares or merchandise shall be confiscated and forfeited for the use and benefit of the Republic; and so soon as a sale of them shall be made, the Collector shall deduct from the proceeds of such sale the amount of duty which this act provides, and the balance shall be divided into two equal parts, one of which shall be paid into the Treasury, and the other divided in equal portions among the officers of the respective Custom Houses.

Sec. 8. Be it further enacted, That it shall be lawful for the appraisers to call before them and examine upon oath any owner or consignee or other person, touching any matter or thing which they may deem material in ascertaining the true value of any merchandise imported, and to require the production on oath, to the Collector and such appraisers, of any letters, accounts or invoices in his possession relating to the same; for which purpose the appraisers appointed are hereby authorized to administer oaths. And if any person so called shall fail to attend, or shall decline to answer or to produce such papers when so required, he shall forfeit and pay a penalty of fifty dollars; and if such person be the owner, importer or consignee, the appraisalment and declaration which said appraisers may make, relative to such goods, wares or merchandise as shall come under their examination by the fourth, seventh and eighth sections of this law shall be final and conclusive.

Sec. 9. Be it further enacted, That if the importer of any goods, or his agent, or consignee, after full conference with him, shall declare before the Collector that he cannot, for want of full information, make a full or perfect entry of such goods, and shall make and subscribe a declaration to the truth thereof, it shall be lawful for the Collector to receive an entry by bill of sight, for the packages or parcels of such goods, by the best description which can be given, and to grant a permit thereupon, in order that the same may be landed and stored in the public warehouse, where they may be seen and examined by such importer, or consignee, in presence of the proper officer; and if within three

months from the date of storing, such importer, or consignee shall furnish the Collector with a full and proper entry, accompanied by the proper invoices, and upon examination, it shall appear that the goods are fairly described and valued in the entry and invoices, the duty shall be levied upon the same, as before provided for, where entries are regular, and so soon as the amount of duties shall be paid in cash to the Collector, the goods shall be delivered to the importer or consignee. And should such importer or consignee not be able to make a full and proper entry of such goods within the three months, as aforesaid, it shall be the duty of the Collector to have such goods appraised in the manner as provided for in the fourth section of this act, and on such appraisement, to levy and collect the duties as aforesaid.

Sec. 10. Be it further enacted, That the rate of duties on distilled spirits of every denomination, under this act, shall be as follows:—Whiskey, first and second proof, twenty-five cents per gallon; third proof, thirty-seven and a half cents per gallon; fourth proof, fifty cents per gallon; and over fourth proof, seventy-five cents per gallon; and in like manner, all distilled spirits, of whatever denomination, and which shall be found on inspection, of a greater degree of strength, or proof, than that known and styled fourth proof, shall pay a duty of seventy-five cents the gallon. Brandy first and second proof, fifty cents per gallon; third and fourth proof, sixty-two and a half cents per gallon; above fourth proof, seventy-five cents per gallon. Gin and rum shall pay the same duty as brandy; and all other distilled spirits not herein enumerated, including every variety of cordials and liquors, shall pay the same duty as brandy. Wines, claret in cases, ten per cent. ad valorem; in casks, ten cents per gallon; Burgundy, Hermitage, Chambertain, and all other varieties of Burgundy wines, fifteen per cent. ad valorem; French white wines, ten per cent. ad valorem, except Champagne, which shall pay two dollars and fifty cents each basket or hamper, of one dozen quart bottles, or of twenty-four pints; Oporto, or Port wine, thirty-seven and a half cents per gallon; Madeira and Sherry wine, seventy-five cents per gallon; Tenneriffe and Spanish white wines, twenty-five cents per gallon; Spanish red wines, twenty-five cents per gallon; German and Rhenish of every variety, fifty cents per gallon. Cider and malt liquors, whether in casks or bottles, ten per cent. ad valorem. In estimating the quantity of wine in cases, boxes, hampers or baskets, or in any other package, the dozen full sized bottles (denominated quarts) shall be estimated to contain two gallong and two-fifths of a gallon, and half bottles in the proper proportion.

Sec. 11. Be it further enacted, That the President of this Republic be and he is hereby authorised to issue such instructions as may be necessary and which he may deem proper, to the Secretary of the Treasury, to carry into effect such present and future agreements with the Government of France, by the regulation of the duties on goods, wares and merchandize imported from that country, as will conform to the stipulations made in the treaty of amity and commerce entered into between this Government and the Government of France, and such future agreements as may be made between the two Governments.

Sec. 12. Be it further enacted, That there shall be admitted free from duty, when introduced by emigrants arriving in this country, such farming utensils and implements of husbandry, furniture which has been used and in use, to the amount of five hundred dollars, and also the tools or implements of trade of persons arriving in the Republic of Texas; wearing apparel and other personal baggage in actual use and belonging to the person arriving in the country; and in order to ascertain what articles ought to be exempted, according to the true intent and meaning of the provision aforesaid, due entry must be made thereof, as of other goods, wares or merchandize imported from a foreign port, with the Collector of the district in which the said articles are intended to be landed by the owner or owners thereof, who shall take and subscribe the oath required by the revenue laws of the United States in similar cases made and provided.

Sec. 13. Be it further enacted, That, from and after the first day of April next, there shall be allowed and paid to the Collector of customs at the several ports of this Republic, the hereinafter described fees, that is to say, for every entrance of any ship or vessel of less than one hundred tons burthen, one dollar and a half; of one hundred tons and upwards, two dollars and a half; for every clearance of vessels of like burthen, like fees of one dollar and a half, and two dollars and a half; for every port entry, two dollars; for every permit to land goods, twenty cents; for every bond taken officially, forty cents; for every permit to load goods for exportation which are entitled to debenture, or other official certificate, twenty cents; for every bill of health, twenty cents; for every document (registers excepted) required by any merchant, owner or master of any ship or vessel not before enumerated, twents cents; and it shall be the duty of the Collectors, or other officer of customs, who, for the Collector, may collect fees, to keep accurate accounts of all fees and official emoluments received by them; also of all expenditures, particularizing the expenditures for rent, fuel, stationery and clerk hire,

and transmit annually, within forty days after the last day of September, on account as aforesaid, verified on oath to the Secretary of the Treasury, who shall annually lay an abstract of the same before Congress; and if any Collector shall omit or neglect to keep an account as aforesaid, or to transmit the same verified as aforesaid, he shall forfeit and pay a sum not exceeding one thousand dollars, for the use and benefit of the Republic.

Sec. 14. Be it further enacted, That it shall be lawful for any Collector or other officer of customs, or inspector of the customs, as well in any adjoining district as that to which he belongs, to stop, search and examine any carriage or vehicle of any kind whatsoever; and to stop any person travelling on foot, or beast of burden on which he shall suspect there are goods, wares or merchandize which are subject to duty, or which shall have been introduced into this Republic in any manner contrary to law, and if such officer shall find any goods, wares or merchandize on any such carriage, vehicle, person travelling on foot or beast of burden, which he shall have probable cause to believe are subject to duty, or have been unlawfully introduced into this Republic, he shall seize and secure the same for trial, without it being necessary to have a search warrant or any other legal form of process to examine any carriage, wagon, cart or other description of vehicle, vessel, boat or other description of water craft, or any vehicle of whatever form or construction, denomination or name whatsoever, employed as a medium of transportation, or to examine any packages conducted or carried by any animal or animals, or carried by man on foot.

Sec. 15. Be it further enacted, That every Collector or other person specially appointed by him for that purpose, shall have full power and authority to enter any ship or vessel on board of which they shall have reason to suspect any goods, wares or merchandize, subject to duty, are concealed, and therein to search for, seize and secure any such goods, wares or merchandize; and if they shall have cause to suspect a concealment thereof in any particular dwelling house, store, building or other place, they or either of them shall, upon proper application on oath to any justice of the peace, be entitled to a warrant to enter such house or other place, (in the day time only,) and there to search for such goods; and if any shall be found, to seize and secure the same for trial; and all such goods, wares and merchandize on which the duties shall not have been paid, shall be forfeited.

Sec. 16. Be it further enacted, That it shall be the duty of any officer of the customs to make seizure of and secure any ship or vessel, steam boat, shallop or any description of water

craft having on board goods, wares or merchandise, on which the duties have not been paid, and which are evidently detained or kept on board of such vessel or craft for the purpose of evading the payment of the duties; as also the goods and merchandise which they may find on board and such goods and merchandise as may be found landed, whether within or without the respective district of such officer.

Sec. 17. Be it further enacted, That if any person shall forcibly resist, prevent, or impede any officer of the customs, or any person appointed by the Collector to assist such officer in the execution of his duty, such person so offending shall, for every such offence be fined in a sum not exceeding five hundred dollars; and if any master or other person having the charge or command of any ship or vessel coming into or arriving at any port or place in this Republic, shall obstruct or hinder, or shall be the cause of any obstruction or hindrance, with such an intent, to any officer of the customs or revenue, in going on board of such ship or vessel for the purpose of carrying into effect any of the revenue laws of the Republic, shall forfeit for every such offence a penalty not exceeding five hundred dollars nor less than fifty dollars. And if any officer or other person executing, or aiding or assisting in the seizure of goods, shall be sued or molested for any thing done in virtue of the powers given in this act, or by virtue of a warrant granted by any Judge, pursuant to law, such officer or other person may plead the general issue, and give this act in the special matter in evidence; and if in such suit the plaintiff is nonsuited, or judgment pass against him, the defendant shall recover double costs; and in actions, suits or informations to be brought, where any seizure shall be made pursuant to this act, if the property be claimed by any person, in every such case, the onus probandi shall be upon such claimant.

Sec. 18. Be it further enacted, That in any suit or prosecution against any officer of the customs or other person appointed as provided in the foregoing section, and judgment shall be given against the defendant or respondent, if it shall appear to the court, before which suit or prosecution shall be tried, that there was probable cause for doing such act or thing, such court shall order a proper certificate or entry to be made thereof, and in such case, the defendants or respondent, shall not be liable for costs, nor shall he be liable to execution, or to any action for damages, or to any other mode of prosecution for the act done by him as aforesaid; Provided, That such property or articles as may be held in custody by the defendant, if any be, after judgment, forthwith returned to the claimant or claimants, his, her or their agents.

Sec. 19. Be it further enacted, That any Collector, inspector or other officer of the customs, when proceeding to make any search or seizure authorized by this act, shall be and he is hereby empowered to command any person who shall be within ten miles of the place where such search or seizure shall be made, to aid and assist such officer in the discharge of his duty therein; and if any person, being so commanded, shall neglect or refuse to aid and assist such officer in making such search or seizure, the person so neglecting or refusing, shall forfeit and pay a sum not exceeding two hundred dollars, nor less than fifty dollars, and such officer may also command, in case of resistance, the assistance, of the Sheriff or any of his deputies, who shall call upon the posse of his county, if necessary in his or their judgment to render effectual the execution of this act; and all citizens or inhabitants of the county, above the age of eighteen years and able to travel, who refuse or neglect, upon proper notice from the Sheriff or any of his deputies, to join such posse, shall be considered guilty of a misdemeanor, and liable to a fine not exceeding three hundred dollars, and be imprisoned for a term not exceeding three months.

Sec. 20. Be it further enacted, That all penalties, accruing by any breach of this act, shall be sued for and recovered with costs of suit in the name of the Republic of Texas, in any court competent to try the same; and the trial of any fact which may be put in issue shall be tried within the Judicial District in which any such penalty shall have accrued; and the Collector, within whose district the seizure shall be made, or forfeiture incurred, is hereby enjoined to cause suits for the same, to be commenced without delay and prosecuted to effect; and is authorized to receive from the court, within which such trial is had, or from the proper officer thereof, the sum or sums so recovered, after deducting all proper charges to be allowed by the said court, and on receipt thereof, the said Collector shall pay and distribute the same without delay, according to law, making quarterly returns of all moneys received by him for fines, penalties and forfeitures to the Secretary of the Treasury. And all ships or vessels, goods, wares or merchandize, which shall become forfeited in virtue of this act, shall be seized, libelled and prosecuted, as aforesaid, in the proper court having cognizance thereof; which court shall cause twenty day's notice to be given of such seizure and libel, by causing the substance of such libel, with the order of the court thereon, setting forth the time and place of trial, and proclamation shall be made in such manner as the court shall direct, and if no person shall appear and claim any such ship or vessel,

goods, wares or merchandize, and give bond to defend the prosecution thereof, and to respond the cost, in case, he shall not support his claim, the court shall proceed to hear and determine the cause, according to law, and upon the prayer of any claimant to the court, that any ship or vessel, goods, wares or merchandize so seized and prosecuted, or any part thereof, should be delivered to such claimant, it shall be lawful for the court to appoint three proper persons to appraise such ship or vessel, goods, wares, or merchandize, who shall be sworn in open court for the faithful discharge of their duty; and such appraisement shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisement, if the claimant shall, with one or more sureties approved of by the court, execute a bond in form to the Republic of Texas for the payment of a sum equal to the sum at which such ship or vessel, goods, wares or merchandize was appraised at, and moreover produce a certificate from the Collector or proper officer of the customs of the district, that the duties on such goods, wares or merchandize, or tonnage dues on such ship or vessel, (if any be required,) have been paid in the same manner as if they had been regularly and legally entered, the court shall, by rule, order such ship or vessel, goods, wares and merchandize, to be delivered to the said claimant, and the said bond shall be lodged with the proper officer of the court, and if judgment shall pass in favor of the claimant, the court shall cause the said bond to be cancelled; but if judgment shall pass against the claimant as to the whole or any part of such ship or vessel, goods, wares or merchandize, and the claimant shall not, within twenty days, thereafter pay into the court, or to the proper officer thereof, the amount of the appraised value of such ship or vessel, goods, wares or merchandize so condemned, with the costs, judgment shall and may be granted upon the bond on motion in open court without delay; provided, that when any prosecution shall be commenced on account of the seizure of any ship or vessel, goods, wares or merchandize, and judgment shall be given for the claimant or claimants, if it shall appear to the court, before whom such prosecution shall be tried, that there was a reasonable cause of seizure, the said court shall order a proper certificate thereof, and, in such case the claimant or claimants shall not be entitled to costs, nor shall the person who made the seizure or the prosecutor be liable to action, suit or judgment on account of such seizure and prosecution; provided, that such ship or vessel, goods, wares or merchandize be, after judgment, returned to such claimant, his, her, or their agent or agents.

Sec. 21. Be it further enacted, That all ships or vessels, goods, wares or merchandise, which shall be condemned by virtue of this act, and for which bond shall not have been given by the claimant or claimants, agreeably to the provisions of the foregoing section, shall be sold by the Sheriff of the county or other officer appointed by the court in which condemnation shall be had, to the highest bidder at public auction, by order of such court, at such place as it may appoint, by giving at least fifteen day's notice (except in cases of perishable goods,) in a newspaper where such sale shall be, or in two newspapers in the nearest places thereto, if no newspaper be published at the place of sale; and the amount of such sales, deducting all proper charges, shall be paid, within ten days after such sale, by the person selling the same to the clerk of the District Court of the respective district, who after deducting the charges allowed by the court, shall pay the balance to the Collector of the district in which such seizure or forfeiture has taken place, as hereinbefore directed.

Sec. 22. Be it further enacted, That all fines, penalties and forfeitures, received by virtue of this act, and which are not herein otherwise appropriated, shall after deducting all proper costs and charges, (and until by law are otherwise directed,) be disposed of in the same manner as under similar acts and circumstances, they are disposed of under the laws of the United States.

Sec. 23. Be it further enacted, That the Collectors of the respective Districts may, with the approbation of the Secretary of the Treasury, provide and employ such small open row and sail-boats in each District, together with the number of persons to serve in them as shall be necessary, for the use of the inspectors and other officers of the customs in going on board of ships or vessels, and otherwise for the better detection of frauds, smuggling and other illicit and unlawful trades, the expense of which shall be defrayed out of the products of duties.

Sec. 24. Be it further enacted, That each and every Collector of public revenue arising from impost duties on merchandise imported into this Republic, shall be and he is hereby required to give bond, with good and sufficient sureties, to the satisfaction of the Secretary of the Treasury, in the sum of twenty-five thousand dollars, conditioned for the true and faithful performance of his duties; and every Collector shall be required to make returns quarterly to the Treasury Department, which must express the number and class of vessels which have entered; their separate and aggregate amount of tonnage; the amount of goods introduced; by whom introduced and date of entry; the amount of moneys received for duties and from whom received;

the quantity and value of merchandise deposited in the public ware-house, the amount of duties due thereon and from whom; which statement shall be published quarterly by order of the Secretary of the Treasury; and any Collector of the public revenue who is found guilty of embezzling the same, or conniving, aiding or abetting in defrauding the Public Treasury, shall be deemed guilty of a misdemeanor, and on conviction thereof before a competent tribunal, shall be punished accordingly, dismissed from office, and rendered incapable ever thereafter of holding any office of honor, trust or profit in this Republic.

Sec. 25. Be it further enacted, That it shall be and is hereby made the duty of the Collector of the District of Galveston to make monthly returns of the amount of money which may have been collected by him in his district during each month, and pay the same over to the Secretary of the Treasury, without prejudice to the quarterly returns which by the foregoing section, he is required to make.

Sec. 26. Be it further enacted, That the Secretary of the Treasury be and he is hereby authorized to instruct and require the Collector of the Port of Galveston to place an office at San Luis, in the west pass of Galveston Bay, there to perform the duties of a surveyor of the customs, receive all entries and reports of vessels and merchandise, and grant clearances for the same, and to make his returns every two months to the Collector aforesaid, and further to instruct said Collector of Galveston, and require him to permit vessels arriving from foreign ports, destined for Houston, to proceed to that place without the necessity of unlading at Galveston, by putting on board of such vessel or vessels an inspector of customs, under such instructions as the faithful and prompt collection of the revenue may require, and at the same time to afford all the convenience possible to the inhabitants of the city of Houston in the introduction of merchandise. And be it further enacted, That the said Secretary of the Treasury, under the direction of the President, be authorized to form and establish another collectoral district on Red River, embracing such counties or parts and portions of counties as in his judgment may be best suited to promote the objects of revenue of the country, by preventing clandestine and fraudulent introduction of goods, wares and merchandize, and also fix upon the place or places where entries or merchandise introduced into the territory of the Republic within such collectoral district shall be made, in conformity with the provisions of this law. And a Collector and other officers and guardians of the revenue shall be appointed as

may, in the opinion of the Secretary, be necessary for the prompt and effectual collection of the revenue.

Sec. 27. Be it further enacted, That a drawback of duties shall be allowed and paid on all goods, wares or merchandise, whereupon the duties have been paid, which shall be exported to any foreign port or place beyond seas from the port or place of original importation; and all duties, drawbacks and allowances which shall be payable and allowable on any specific quantity of goods, wares or merchandise, shall be deemed to apply in proportion to any greater or lesser quantity; Provided, That no privilege of drawback shall be deemed to extend or permitted on goods, wares or merchandise which are exported or transported to the territory of any foreign state or power immediately adjoining the Republic of Texas; And further provided, That such goods, wares or merchandise, so exported for the benefit of drawback be exported within twelve months from the date of the entry thereof in the district where they were imported or introduced.

Sec. 28. Be it further enacted, That no drawback shall be allowed on goods, wares and merchandise imported into this Republic when the duties paid on such goods, wares or merchandise at the time of importation did not amount to fifty dollars, nor unless they be exported in the original casks, cases, chests, boxes, trunks or other packages in which they were imported without diminution or change of the articles which were therein contained at the time of importation in quantity, quality or value, necessary or unavoidable wastage or damage only excepted; Provided, That it shall be lawful for the exporter or exporters of any liquors in casks, coffee in casks or other packages, or any unrefined sugars, to fill up the casks or packages out of other casks or packages included in the same original importation, or into new casks or packages corresponding therewith, to be marked and numbered as the original casks or packages, in case the original casks or packages shall, with the opinion of the officer appointed to examine the same, be so injured as to be rendered unfit for exportation, and in no other case; Provided further, That the filling up or change of package be done under the inspection of a proper officer, and under such further provisions and requirements as are provided in an act entitled an act to provide and establish the warehousing system in the ports of this Republic; And provided further, That the exporter or exporters of any goods, wares or merchandise for the benefit of drawback, shall give at least twenty-four hours' notice of his intention to export such goods, wares or merchandise, (except in cases of distilled spirits, when six hours' notice shall be deemed sufficient,) and shall make entry

thereof in writing, describing particularly the casks, cases, chests, boxes and other packages, their respective marks, numbers and contents, the name of the ship or vessel and master's name; Provided always, That it shall be lawful for the Collector of any port of this Republic, in all cases of exportation of merchandise for the benefit of draw back, where any doubt may arise as to the proper mode of procedure, to refer to and be goverend by the laws of the United States relative to drawbacks, in his decisions, unless they should conflict with the provisions of this act, and of the beforecited act establishing the warehousing system.

Sec. 29. Be it further enacted, That it shall be the duty of the Secretary of the Treasury, under the direction of the President, to place a Sub-Collector of the customs at Point Bolivar at as early a period as practicable, for the better protection of the revenue.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

To provide and establish the Warehousing System in the Ports of this Republic.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the Secretary of the Treasury be, and he is hereby authorized and required, so soon as may be, to provide good and sufficient Warehouses in the ports of this Republic, in which goods, wares and merchandise may be warehoused and secured without payment of duty upon the first entry thereof or for exportation, in conformity with the revenue laws.

Sec. 2. Be it further enacted, That all goods entered to be warehoused, shall be carried to the warehouse under the care or with the authority or permission of the proper officer of customs, and in such manner, and by such persons, and within such spaces of time as the said officer shall authorize, permit, or direct.

Sec. 3. Be it further enacted, That all goods which have been warehoused, shall be duly cleared either for exportation or

for home consumption within one year from the date of the entry thereof, unless the Secretary of the Treasury, for good and sufficient causes, extend the time, which he can do three months longer; and if such goods be not so cleared, it shall be lawful for the Secretary of the Treasury to order the Collector of the port, where such failure may take place, to advertise and sell at public auction, by giving fifteen days' notice in some newspaper, if any be printed at such port, or by some other public mode, all such goods; and the produce of such sale shall be applied to the payment of the duties, warehouse, rent and other charges, and the overplus, if any, paid to the owner or proprietor of such goods, if he be known; if not, to be put into the Treasury to the credit of such owner or proprietor.

Sec. 4. Be it further enacted, That if any goods, entered to be warehoused, be lost or destroyed by any unavoidable accident, either on ship-board or in the landing or shipping of the same, or in the receiving into or delivering from the warehouse, it shall be lawful for the Secretary of the Treasury to remit or return the duties payable or paid on the goods so lost or destroyed.

Sec. 5. Be it further enacted, That in case any embezzlement, waste, spoil or destruction shall be made of any goods or merchandise warehoused in warehouses under this act, through any wilful misconduct of any officer of customs, such officer shall be deemed guilty of a misdemeanor, and shall upon conviction, suffer such punishment as the court may inflict; Provided, That the shortest term of imprisonment shall be one year. The importer, consignee or proprietor of the goods or merchandise so embezzled, wasted, spoiled or destroyed, shall not be liable to pay any duties on such goods and merchandise so embezzled, &c.; and if such officer be prosecuted to conviction by such importer, consignee or proprietor of such goods or merchandise so embezzled, &c., such damage as he may have sustained shall be paid and made good to him by the Secretary of the Treasury.

Sec. 6. Be it further enacted, That all goods and merchandise required to be removed from the warehouses for consumption or for exportation, shall be removed or carried to be shipped under the care or with the authority or permission of the proper officer of customs, and in such manner and within such spaces of time as he may direct, and all goods not so removed shall be liable to confiscation and forfeiture.

Sec. 7. Be it further enacted, That upon the entry outwards of any goods or merchandise to be exported from the warehouse to parts beyond the seas, or to the place from which they may have been imported before a permit shall be granted, if the

amount of duties has been paid, the person in whose name the same be entered, shall give security by bond in quadruple the amount of the duties, with sufficient security, that such goods shall be duly shipped and exported, and shall be landed at the place for which they be entered outwards or otherwise accounted for to the satisfaction of the collector of customs; and it shall not be lawful for any person to export any goods so warehoused, nor to enter them for exportation, in any ship or vessel of a less burthen than forty-five tons.

Sec. 8. Be it further enacted, That all goods warehoused, shall be stowed in such manner as that easy access may be had to every package or parcel of the same, and in case private warehouses should be used, the occupier of such warehouse shall attend and cause the storage to be made as aforesaid, and if he omit so to store the same, he shall, for every such omission, forfeit the sum of ten dollars; and if any goods be taken out of the warehouse without due entry of the same with the proper officer of the customs, the occupier of the warehouse shall be liable to the payment of the duties due thereon.

Sec. 9. Be it further enacted, That if any goods or merchandise warehoused be fraudulently concealed in or removed from the warehouse, the same shall be forfeited; and if any importer or proprietor of any goods warehoused, or any person in his employ, shall by any contrivance, fraudulently open the warehouse, or gain access to the goods, except in the presence of the proper officer acting in the execution of his duty, such importer or proprietor, shall forfeit and pay for every such offence the sum of one thousand dollars.

Sec. 10. Be it further enacted, That it shall be lawful in the warehouse to sort, separate, pack and repack any goods, and to make such lawful alterations therein, or arrangements thereof as may be necessary, either for the preservation of such goods, or in order to the sale, shipment or legal disposal of the same; Provided, That such goods be repacked in the packages in which they were imported, and that all the operations shall be performed under the inspection of the proper officer of customs, and the importer or proprietor shall defray all expenses attendant thereon.

Sec. 11. Be it further enacted, That whenever it becomes necessary to unpack, separate and repack any goods or merchandise, for reason of damage, and where a part of such goods or merchandize be found in a perfect and sound state, it shall be lawful to make up packages of the sound and perfect goods; and in all cases where duties may have been assessed and collected off of goods or merchandise in their sound and perfect state, and

it shall be found that from accident, or from the perishable nature of such goods or merchandise, a portion or part of them be damaged, that the general value of the whole of them shall be materially effected if the duties should have been paid on their value in a sound and perfect state, it shall be lawful for the Collector of the customs to appoint appraisers to estimate and appraise the damage or injury sustained, or to appraise and estimate the value of the goods which remain in a perfect state and condition, or in such condition, though not perfect and sound, as shall not entirely destroy them and render them worthless, then and in all such cases the Collector shall furnish to the importer or proprietor of such goods and merchandise, a statement setting forth minutely the change and variation of such goods, as also their then appraised and estimated value; on which statements so made by the Collector, it shall be lawful for the Secretary of the Treasury to refund and pay back to the importer and proprietor of such goods, the excess of duties paid; that is, the difference between their sound and perfect state, and that of their damaged condition; and if the duties have not been paid, it shall be lawful for the Collector to levy, assess and collect the duties on such goods, on the amount of their then appraised value; Provided, That in all cases where part of a package of merchandise are damaged and a part perfect and sound, the damage and injury shall only be estimated upon the part injured, and shall not be estimated generally upon the whole package.

Sec. 12. Be it further enacted, That in all cases where there may be parts or portions of packages of merchandise damaged, it shall be lawful to unpack, sort, separate and repack the sound and perfect portions; and the duties shall be levied and assessed upon them in the same manner as would have been, had no such damage to a portion occurred; and if the damaged portion of such merchandise be totally worthless, then and in that case, it shall be destroyed; but if any portion of it can be used, such portion shall be appraised and duties levied thereon according to the appraised value, and such duties shall be paid by the importer or proprietor before they be delivered to him.

Sec. 13. Be it further enacted, That it shall be lawful for the Collector of customs to accept the abandonment for the duties of any quantity of tobacco, coffee, pepper, pimento, cocoa and also of any whole package of other goods, and to cause the same to be destroyed if totally worthless, or to sell such quantity of tobacco, coffee, pepper, pimento, cocoa, or of the contents of such whole packages of goods as may be considered proper to sell, and place the proceeds thereof to the credit of the revenue, and make returns

of the same as provided for all other collections; Provided always, That such sales be made by the Collector at public auction, and after ten days' notice thereof shall have been given.

Sec. 14. Be it further enacted, That for the delivery from the public warehouses or stores, it shall be necessary to present to the public store keeper or proper officer appointed, a permit from the Collector or Deputy Collector, specifying as particularly as may be the goods to be delivered; namely,—the number and description of the packages, whether trunk, bale, chest, box, case, pipe, hogshead, barrel, keg or other denomination of package whatever, with the mark and number of each package, as near as may be, the contents thereof, also the name of the vessel in which they were imported, the name of the master, port or place from whence she came, and that the duties thereon have been paid or that they are about being exported, and the name and class of the vessel on board of which they are so to be exported, and the name of the master or captain of such vessel; and no goods, wares or merchandise shall be delivered by the public store keeper or other officer of the customs appointed therefor, without such requisite written permit, nor unless the description of such goods, wares or merchandise agrees with the permit; and the form of all permits for the purposes of deliveries from the public stores shall be as follows:—Port of ————. To the keeper of the public warehouse:—I, A. B., Collector of the Port of ————, do certify that (here the name of the owner or consignee) has paid the duties on merchandise contained in the following packages, in conformity with an entry made of this date; which merchandise was imported in the (vessel's name, denomination, master's name, and port from which she arrived.) Permission is hereby given and you are required to deliver the same, viz: (here particularly insert the mark, number and denomination of each package, and as near as may be, their contents, noting those articles that are to be either weighed, gauged or measured.) A. B., Collector. When the merchandise, required to be delivered from the public stores, is for exportation under the benefit of drawback, it must be expressed in the permit; and the name of the vessel, her class and the name of the master must be expressed, and also the port of her destination; with all the particulars and specialties in the description of the packages, marks, numbers and contents as hereinbefore provided.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

To provide for the more certain operation of the Sinking Fund, created by an act of Congress of the Republic of Texas, passed 22d January, 1839,—to extinguish the five million loan authorised to be raised under two several acts of Congress of 18th November, 1836, and 16th May, 1838; and such further loans as the Republic may cause to be negotiated, and for other purposes.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That for the purpose of carrying into effect the provisions of the act of Congress, passed 22d January, 1839, setting apart annually the sum of three hundred thousand dollars, as a permanent and accumulating sinking fund for the redemption of such bonds of the Republic as may be, or may have been issued by James Hamilton and Albert T. Burnley, Commissioners in pursuance of the several loan acts of 1836, '38, and '39. The Secretary of the Treasury, the Secretary of State, and First Auditor of the Treasury be and hereby are appointed Commissioners of the said sinking fund.

Sec. 2. Be it further enacted, That immediately after the survey of the public lands, and when any portion of the same shall be brought into market and sold, it shall be the duty of the Secretary of the Treasury to pay over to the said Commissioners, on the 1st days of May and November in each and every year, the aforesaid sum of three hundred thousand dollars, in two equal semi-annual instalments of one hundred and fifty thousand dollars each, which the said Commissioners are hereby required to remit forthwith to such agents in London, Paris, Amsterdam, or wherever the said loan may be negotiated, as may be authorized to pay the dividends on the aforesaid bonds.

Sec. 3. Be it further enacted, That in case, from consideration of public convenience, or policy, it shall be deemed inexpedient to bring the public lands into the market on or before the 1st of January, eighteen hundred and forty-two, or that when so brought forward, it should be deemed inexpedient to sell them, it is hereby declared to be then and after that period the duty of the Secretary of the Treasury to provide from other sources of revenue, and to pay over to the aforesaid Commissioners of the sinking fund, the full sum of three hundred thousand dollars, in the instalments before mentioned, or such sum as with the amounts realized from sales of public lands, shall make up at the period

stated, the sum of three hundred thousand dollars, to be remitted to the agents aforesaid in London, Paris, Amsterdam, or wherever the said loan may be effected: but there shall be nothing in this act which shall prevent the Government of Texas from applying a larger sum annually from other sources to the said sinking fund; provided, the bonds are redeemed in conformity with the provisions of this act.

Sec. 4. Be it further enacted, That the said agents in London, Paris, Amsterdam, or wherever the said loan may be negotiated, shall with the aforesaid fund enter the market and purchase at the lowest price at which they may be obtained the aforesaid ten per cent. bonds of the five million loan; should, however, the market price of said bonds reach fifty per cent. premium beyond the par value of the same, the holders of said bonds shall be required on the application of said agents to surrender and cancel the same on the payment of paid par value and said premium.

Sec. 5. Be it further enacted, That the lowest numbers of the bonds in circulation shall be reimbursable at the maximum price in the first instance; provided, they cannot be obtained at a lower rate.

Sec. 6. Be it further enacted, That the said agents in London, Paris, Amsterdam, or wherever said loan may be negotiated, in case they are not able to purchase the aforesaid bonds at one hundred and fifty pounds money for one hundred pounds stock, shall make a public declaration in one or more of the London, Paris, Amsterdam, (or wherever the loan may be negotiated) news papers, designating the number of the bonds to be paid off, beginning at the lowest number in circulation, after which declaration no interest will be paid beyond the semi-annual dividend then next accruing.

Sec. 7. Be it further enacted, That it shall be the duty of the said agents in London, Paris, Amsterdam, or wherever said loan is negotiated; provided, the holders of the bonds announced to be redeemed, do not present the same for payment within ninety days after said announcement to invest the amount in their hands not applied to the redemption of the bonds in Exchequer bills, or in the public securities of the country where the loan is negotiated, to be deposited in the Banks of England, Paris, Amsterdam, or wherever the said loan be negotiated, to be held on the account and risk of the holders of said bonds advertised to be redeemed.

Sec. 8. Be it further enacted, That the agents in London, Paris, Amsterdam, or wherever the loan shall be negotiated, shall

semi-annually announce in one or more of the newspapers of London, Paris, Amsterdam, or wherever the loan shall be negotiated, the numbers and amounts of the bonds so redeemed, which shall be cancelled and deposited in the Banks of England, Paris, or Amsterdam, or wherever the loan may be negotiated, as the case may be, and a notarial certificate of the specification of said redemption be transmitted to the Secretary of the Treasury of the Republic of Texas, to whom likewise a semi-annual account of said agents shall be rendered.

Sec. 9. Be it further enacted, That the Commissioners of loan of this Republic, in case they deem it advisable to sign and issue bonds bearing an interest of six, five, four, or three per cent. are empowered to issue bonds to the amount of seven millions of dollars, (without reference to discount at which they may be sold by reason of their bearing a less rate of interest than ten per cent.) and, that they be authorized conformably to the most advantageous terms on which the bonds can be disposed of, to make them payable in ten, twenty, or thirty years; provided, not more than one third of the same shall be payable in a less term than ten years.

Sec. 10. Be it further enacted, That in case any supplementary loan shall be authorized by the President, under instructions of both branches of Congress, the same powers and discretion are hereby given to said Commissioners, both as to the rate of interest and time of payment of said loan.

Sec. 11. Be it further enacted, That in case any additional loan other than the five millions now authorized by law to be negotiated, the sum of sixty thousand dollars for each million of dollars negotiated or borrowed over and above the interest, is reserved and set apart out of the sales of public land, as a permanent and accumulating sinking fund for the redemption of the said bonds, to be annually remitted to the agents in London, Paris, Amsterdam, or wherever the said loan may be negotiated, who shall be authorized to pay the dividends on the bonds to purchase the said bonds whenever those bearing a less rate of interest than ten per cent. can be purchased at or under par; and it is further declared, that any saving of interest which may arise from the negotiation of the bonds bearing a less rate of interest than ten per cent., shall be annually carried to a sinking fund appropriated for the redemption of said loan or loans.

Sec. 12. Be it further enacted, That so soon as the loan or any part of the loan authorized is negotiated, the Commissioners or any one of them shall have full power to draw forthwith for

the same, or authorize any president or cashier of any bank in the first credit in the city of New York, of the United States, to do the same, and to deposite the nett proceeds of said loan or any part of it which may be negotiated to the credit of the Republic of Texas in said bank, to be drawn by an order of the President of said Republic, countersigned by the Secretary of the Treasury, to be disposed of as Congress may by law direct.

Sec. 13. Be it further enacted, That in the event of the absence or death of one of the Commissioners, any contract made by the other shall be conclusive and binding on the Republic of Texas; although the concurrence of both Commissioners is necessary and binding to the signature and issue of said bonds.

Sec. 14. Be it further enacted, That so much of the previous loan act of this Republic, as requires that the bonds issued should be signed by the Minister at Washington, or London, or Paris, be and the same is hereby repealed, and full validity is hereby given to all bonds hereafter signed and sealed by the Commissioners, under the commission of the President of this Republic, without said signature.

Sec. 15. Be it further enacted, That for the redemption of all loans negotiated by the authority of the Republic of Texas, independently of the reservation of the sinking fund, the proceeds of the public lands generally, its revenues and public faith are solemnly pledged.

Sec. 16. Be it further enacted, That no portion of the loan that may be negotiated for the Republic of Texas, shall be paid out than as hereafter appropriated by law.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved 14th January, 1840.

MIRABEAU B. LAMAR.

AN ACT

Supplementary to an act to amend the several laws regulating the Post Office Department.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That it shall be the duty of the Post-Master General to render an

account current to the Secretary of the Treasury once in every three months, of all the receipts and expenditures, in said Department, to be audited and settled, as all other public accounts, at the same time, stating generally, the condition of the Department, suggesting such improvements, as in his opinion, may be useful and necessary, and he shall render his first quarterly account on the first Monday in April next.

Sec. 2. Be it further enacted, That the Post-Master General shall give bond and security, to be approved by the President, in a sum not less than twenty-five thousand dollars, payable to the President of this Republic, or his successors in office, conditioned for the faithful performance of the duties of said office.

Sec. 3. Be it further enacted, That a direct mail route be and the same is hereby established from the city of Austin to the city of Houston by the way of Bastrop, La Grange and San Felipe; and the Post-Master General be and is hereby required to contract for, and have a mail conveyed on said route twice a week, to commence as early as practicable.

Sec. 4. Be it further enacted, That there is hereby established a mail route from San Felipe to Velasco by the way of Richmond, Orazimbo, Columbia, Brazoria and Crosby's, the mail to be transported weekly, so as to meet the mails going from the city of Austin to Houston, or returning therefrom; and the Post Office at San Felipe, for this purpose, is hereby made a distributing office; it is further provided, that a weekly mail route be and is hereby established from La Grange to Gonzales, and a weekly mail route from San Augustine to Macon in Harrison county by way of Shelbyville and the seat of justice of Harrison county.

Sec. 5. Be it further enacted, That a weekly mail route be and is hereby established from Houston to Swartwout via Liberty and Menard's mill, and also a route from Swartwout to Jasper via Robert Barclay's every two weeks; and that Post offices be established on said route at Liberty, Menard's mill, Swartwout and at Robert Barclay's; it is further provided, that the Post-Master General be and he is hereby authorized to contract for the transportation of a weekly mail, over the mail route established the 23d May, 1838, from the city of Galveston to the towns of Matagorda and Texana via Velasco and Quintana.

Sec. 6. Be it further enacted, That the Post-Master General be required to contract for the transportation of the mails over the routes established in the preceding sections as soon as practicable, and that he be also required to procure and furnish

bags for carrying the mails over all the various routes in the Republic, with locks for the same, and a sufficient number of keys as to furnish one key for every Post Office.

Sec. 7. Be it further enacted, That in all cases of failure to perform the trips stipulated in the different contracts for carrying the mail over the various routes in this Republic, the contractor or contractors so failing shall forfeit and pay treble the amount which would have been due said carrier or carriers under their contracts for the transportation of the same; and the Post-Master-General is hereby required to retain the amount of all such forfeiture out of any dues to such contractor or contractors, or to sue for the same on the bonds given by such contractor or contractors in any court, having cognizance of the same, unless satisfactory proof be made that such failure resulted from some unavoidable circumstance.

Sec. 8. Be it further enacted, That the sum of one hundred thousand dollars be and the same is hereby appropriated to defray the expenses of the Post Office Department for the year 1840.

DAVID S. KAUFMAN,

Speaker of the House of Representatives.

DAVID G. BURNET,

President of the Senate.

Approved 14th January, 1840.

MIRABEAU B. LAMAR.

AN ACT

Supplementary to an act, to provide for the protection of the Northern and Western Frontier.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That after positions shall have been selected as specified in the act to which this is a supplement, it shall be the duty of the Colonel to cause 320 acres of ground to be laid off around each station for the use of the Government, and shall further cause nine square leagues of land upon the nearest vacant lands to each station, and cause the same to be laid off into lots of one hundred and sixty acres each, which shall be disposed of as contemplated in the act to which this is a supplement.

Sec. 2. Be it further enacted, That it shall be the duty of the Colonel, or in his absence the officer commanding, to set apart out of the 320 acres, heretofore appropriated to the use of the Government, a lot of ground to be cultivated by the garrison, in the proportion of one acre to each soldier, and further that the Commander of each post, may at his discretion, cause such quantity of ground to be cultivated as a garden, as he may deem proper, for the convenience of his garrison.

Sec. 3. Be it further enacted, That should it happen that a sufficient number of the nine leagues reserve contemplated by the act, to which this is a supplement, cannot be had on vacant lands around each post, to supply the required number of bounties of one hundred and sixty acres each, to the privates enlisted under the terms of the act, to which this is a supplement, it is hereby made a right of the privates so enlisted, to receive under the terms of the beforementioned act, a bounty of two hundred and forty acres on those reserves at a distance from the post.

DAVID S. KAUFMAN,

Speaker of the House of Representatives.

DAVID G. BURNET,

President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

Allowing Discounts and Set-Offs.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That when any suit shall be commenced and prosecuted, in any court within this Republic, for any debt due by judgment, bond, bill, or otherwise, the defendant shall have liberty, upon trial thereof, to make all the discounts he can against such debt; and upon proof thereof, the same shall be allowed in court.

Sec. 2. Be it further enacted, That in every action in which a defendant shall desire to prove any payment on set-off, he shall file, with his plea, an account, stating distinctly the nature of such payment or set off, and the several items thereof; and on failure to do so, he shall not be entitled to prove before

the jury such payment or set-off, unless the same be so plainly and particularly described in the plea, as to give the plaintiff full notice of the character thereof.

Sec. 3. Be it further enacted, That no defendant shall be allowed to set-off any discount or demand against the plaintiff's cause of action, which he may have become entitled to, or procured, after suit instituted, so as to defeat the action, and deprive the plaintiff of his costs of suit; Provided, That the defendant can, in every case, plead any legal discounts or set-offs which he may have up to the time of making his defence according to the rules of pleading; but the court shall, in all cases, when it appears that the defendant's discounts or set-offs were obtained after the institution of suit, give judgment for the amount which is proved to be actually due the plaintiff, (if any there be) together with his costs of suit expended in that behalf.

Sec. 4. Be it further enacted, That whenever any plaintiff may institute his suit for, and establish a demand in any court having jurisdiction of the same, and his claims be reduced by set-off, to an amount not within the jurisdiction of the court, judgment still shall be given for the amount due the plaintiff, and for costs of suit; should the set-off of the defendant exceed the amount established by the plaintiff, then judgment shall be given in favor of the defendant, for the amount that his claim may exceed that of the plaintiff, but the plaintiff shall recover the costs of the suit; but should the claim of the plaintiff be reduced to a sum not within the jurisdiction of the court, by payment, then judgment shall be given in favor of the plaintiff for the balance due; but the defendant shall recover the costs of the suit; and when the defendant may have a claim against the plaintiff, similar in its nature (but they need not be of the same degree) to that of the plaintiff, he shall be permitted to file in his answer a plea of reconvention, setting forth the amount due him, and judgment shall be given in favor of that party who may establish the largest claim, for the excess of his claim over that of his opponent and for costs.

Sec. 5. Be it further enacted, That if the plaintiff's cause of action be brought on a claim for unliquidated or uncertain damages, founded on a tort or breach of covenant, the defendant shall not be permitted to set-off or discount any debt due him by the plaintiff; and if the suit be founded on a certain demand, the defendant shall not be permitted to set-off unliquidated or uncertain damages, founded on a tort or breach of covenant, on the part of the plaintiff.

Sec. 6. Be it further enacted, That all laws contrary to the provisions of this act, are hereby repealed.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.

DAVID G. BURNET,
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

To establish the method of trying the Right of Property levied on by Execution, when the property is claimed by any person not a party to such Execution.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That if any Sheriff shall levy an execution on property, and a doubt shall arise whether the right of such property is in the debtor or not, such sheriff may apply to the plaintiff, his attorney or agent for his bond, with good security, for indemnification for the sale of the property seized; which, if the plaintiff, his attorney or agent refuses or fails to do, within ten days after such application, the Sheriff, or other officer shall be justified in delivering up such property to the party from whose possession it was taken.

Sec. 5. Be it further enacted, That in all cases where a Sheriff, Coroner, or Constable, or other legal officer may levy an execution on property, the title of which is disputed, and shall have taken, or may hereafter take a bond of indemnity, and shall have been, or may hereafter be sued for so doing, by the rightful owner of such property so levied on, and sold, and a recovery had against such Sheriff, Coroner, or Constable or other legal officer, it shall and may be lawful for such officer upon motion in any court having jurisdiction of the matter, to obtain judgment against the obligor or obligors, or either of them, on such bond of indemnity, for the amount of the damages and costs that may have been recovered against him in trying the right of property, if the property when levied on was not in the possession of the defendant in the execution, the burden of proof shall be upon the plaintiff, if it was in his possession, then the burden of proof shall be upon the claimant.

Sec. 3. Be it further enacted, That it shall be the duty of the Sheriff to return the property levied on to the person, out of whose possession the same was taken, upon such person entering into bond with good security to the plaintiff in execution, in double the amount of the debt and costs, conditioned for the delivery of the property to the Sheriff, whenever the claim of the property so taken shall be determined by the court not to belong to such party, and if any person to whom property is so returned, shall neglect, or refuse to deliver the property to the Sheriff, it shall be the duty of the Sheriff forthwith to return the bond to the clerk of the court in which the trial of the right of property is had, which bond shall have the force and effect of a judgment, and execution may be awarded by the court, or justice of the peace, as the case may be, against all or any of the obligors, and on such execution no delivery bond shall be taken; Provided, That a claim to property made in conformity to the provisions of this act, shall operate as a release by the claimant of all right to damages against the Sheriff, or other officer, which he might have had by reason of the taking of such property in execution.

Sec. 4. Be it further enacted, That if such claimant shall refuse, or fail to give such bond and security, it shall be at the option of the plaintiff in execution to indemnify and sell the property, just as if no such claim had been made to it, or await the judgment of the court, upon the issue made upon, to try the right of said property.

Sec. 5. Be it further enacted, That in all trials of the right of property aforesaid, when the claimant shall fail to establish his claim to such property, the court shall give ten per centum damages against him on the amount of the execution.

Sec. 6. Be it further enacted, That in case any execution or attachment issued from any other court, levied upon property which is claimed by any person or persons, not a party to the execution or attachment, the right to the same shall be tried in the same manner (as nearly as may be) as is prescribed in the foregoing act, in all such cases, conforming to the rules and proceedings established for the regulation of the court from which the execution issued.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

To punish Swindling and other offences therein named.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That whoever shall falsely and deceitfully obtain, or get into possession any money, goods, chattles, notes or bank bills by color and means of some false token, or under any false pretence whatever, on conviction thereof, he shall be fined in a sum not exceeding one thousand dollars, and shall be imprisoned not more than two years, at the discretion of the court.

Sec. 2. Be it further enacted, That whoever shall fraudulently pass or transfer, or offer to pass or transfer any paper purporting to be bank paper, and to be issued by any bank or banks, which have never existed, or which having existed, have since broken, with intent to defraud, on conviction thereof before the district court, shall be imprisoned not less than one nor more than five years, at the discretion of the court, and receive thirty-nine lashes on the bare back.

Sec. 3. Be it further enacted, That this act shall be specially given in charge to the grand juries at the commencement of each session of the district court, and indictments under this statute shall not abate for want of form.

Sec. 4. Be it further enacted, That this act shall take effect from and after its passage.

Sec. 5. Be it further enacted, That all laws punishing theft, forgery and counterfeiting with death, so far as relates to the punishments, be and are hereby repealed, and that the punishment of these offences shall be thirty-nine lashes on the bare back, and imprisonment for any time not less than one, nor more than five years, at the discretion of the court; Provided, That all offences heretofore committed, shall be punished by the laws under which such offences were committed.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

For creating Funds for the support of Government, for the year 1840.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the Secretary of the Treasury is hereby authorized and required to procure, engraved or lithographed, as he may deem best, blank forms, to be used for bonds of the Government, of the denomination of \$100 \$500, and \$1,000, which blanks when procured shall be signed by the President and countersigned by the Secretary of the Treasury, and shall be filled up in the name of the Stock Commissioner, by whom they shall be endorsed, and thereby rendered transferable by simple delivery, and redeemable at the pleasure of the Government at any after the 1st of January, 1846, and bearing an interest of eight per centum per annum, payable in gold or silver at the Treasury Department, the first payment of interest to be made on the first of July, 1841, and semi-annually thereafter, on the first days of January and July.

Sec. 2. Be it further enacted, That there is hereby created a fund of one million five hundred thousand dollars, to be known and styled the eight per centum fund, and on which the bonds referred to in the foregoing section must be based, and the bonds shall be numbered and registered in the office of the Secretary of the Treasury, and likewise numbered and registered by the Stock Commissioner, and after endorsed by that officer, returned to the Secretary of the Treasury for issue, as circumstances may require in payment of appropriations for the support of Government for the year 1840.

Sec. 3. Be it further enacted, That the bonds before referred to, shall be at all times receivable by any Collector of revenue, or at the Treasury Department in payment of any debt to the Government; or any duties by impost or direct taxation, for the amount value of such funds, and the interest which may have accrued thereon; Provided, That no fractional amount of interest, less than a semi-annual portion, shall be allowed on such bond, when offered in payment as aforesaid.

Sec. 4. Be it further enacted, That for the payment of the interest on the bonds before referred to, the revenue arising from license tax, and the tax on personal property, is hereby set apart for that purpose.

Sec. 5. Be it further enacted, That the bonds before referred to, shall have attached to them coupons or warrants, for the

amount of semi-annual interest, and which shall severally be cut off and detached, when the respective amount of interest shall be paid by the Treasury Department, which coupons or warrants shall all be filed in the said Department as vouchers for the payment of the interest.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

Authorizing the issuing of Duplicate Land Warrants, Discharges and Certificates for Head-Right Claims, upon certain conditions.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That any person who may have lost any land warrant, discharge or a certificate for a head-right claim, emanating from the Government, and entitling the holder to a bounty of land, shall be entitled to demand and receive a duplicate of the same so lost, by complying with the provisions hereinafter prescribed in this act.

Sec. 2. Be it further enacted, That any person having lost any of the above mentioned certificates, or evidences of claim, shall previous to applying for a duplicate of the same, make or cause publication to be made for sixty days, in at least one newspaper, published at the nearest place where the individual resides, which publication shall describe as correctly as possible the paper lost; and give notice that unless intelligence of it is received at the Department of War, within three months of the date of publication; he will apply to the proper officers for a duplicate of the paper so lost.

Sec. 3. Be it further enacted, That when any person shall apply for a duplicate of any claim against the Government, he shall be required to prove that he has fully complied with the preceding section of this act, and shall take and subscribe an oath to the following effect: That he was the just owner of the claim, that he had never sold, alienated, or transferred the same in any

manner, that it has been lost, and that since lost, he has neither known or heard of the same; whereupon it shall be the duty of the Secretary of War, if the claim so lost be a discharge; or a land warrant which had been issued from his Department, if no intelligence of the same has been received, to issue to the claimant the same quantity of land as was conferred by the original; and if the claim so lost be a certificate which had issued from any of the boards of Land Commissioners of any of the Counties of the Republic, and shall have been reported by the Commissioners appointed to investigate and examine the records of the different land offices as genuine and legal, if no intelligence of the same has been received as aforesaid, it shall be the duty of the Commissioner of the General Land Office to issue to the claimant a duplicate entitling him to the same quantity of land as was conferred by the original; Provided, That administrators, and the legal representatives of deceased persons shall not be required to take the oath prescribed in this act.

Sec. 4. Be it further enacted, That should any land warrant, discharge, or certificate for a head-right of land, for which a duplicate had been issued, be ever after presented to the Commissioner of the General Land Office or Secretary of War, and should it appear that such land warrant, discharge, or certificate for a head-right of land was not lost, but was sold or in any way alienated by the person who obtained the duplicate thereof, it shall be the duty of the Secretary of War, or Commissioner of the General Land Office to give information of the fact to one of the District Attorneys, who shall prosecute the aforesaid person for perjury; and should he be convicted, in addition to the statutory punishment for that crime, he shall be incapable of ever after holding property within, or enjoying any of the privileges of a citizen of this Republic.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved 14th January, 1840.

MIRABEAU B. LAMAR.

AN ACT

To amend an act to provide for the Foreclosing of Mortgages on Real and personal Estate, approved May 15th, 1838.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That from and after the passage of this act, the method of foreclo-

sing mortgages on land or slaves, shall be as follows: any person entitled to foreclose a mortgage on land, or his or their attorney, shall file his petition in the clerk's office of the District Court of the county where such land, or a part thereof is situated, stating the case and the amount of the demand, and describing the property mortgaged. Whereupon the mortgagor shall be summoned to appear at the next term of said court to shew cause why judgment should not be rendered in favor of the mortgagee for such sum with interest and costs as shall be due on such mortgage, which summons shall be served upon the defendant in the manner, and (the) same proceedings shall thereupon be had as in ordinary cases of civil suits, if the defendant be a resident of the country, if not, then notice of the pendency of said suit shall be given by publication made in some public gazette at least four successive weeks before the commencement of the court in which suit is instituted; and if the defendant should fail to appear at the aforesaid court, or appearing, should show no cause why the mortgage should not be foreclosed, then judgment shall be rendered for said mortgagee so petitioning, and execution issue as in other cases; but if there be any dispute about the amount due on any mortgage, if the mortgagor shall appear within the time prescribed by the rules of pleading, and make affidavit of a just defence, the court shall order a trial of the facts before a jury as in other cases.

Sec. 2. Be it further enacted, That the remedy to foreclose mortgages on personal property, shall remain and be as heretofore, and if there should be any dispute as to facts, the trial shall be subject to the same rules and regulations as by law govern the District Courts of this Republic.

Sec. 3. Be it further enacted, That all mortgages shall be recorded as heretofore, but the lien created by the making of the mortgages shall not be lost nor destroyed as between the parties to it; if the mortgagor should fail to have it recorded within the time prescribed by law.

Sec. 4. Be it further enacted, That all laws and parts of laws, now in force, in anywise contravening with the provisions of this act, be and the same are hereby repealed.

DAVID S. KAUFMAN,

Speaker of the House of Representatives.

DAVID G. BURNET,

President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

Supplementary to an act, providing for the payment of persons for Military Services heretofore rendered. Approved January 14th, 1840, and better to define the duties of the First and Second Auditors.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the Treasurer of the Republic of Texas is hereby directed to pay all audited drafts in original hands for personal services rendered and for supplies furnished the army and navy, agreeable to the provisions of the above recited act.

Sec. 2. Be it further enacted, That legal representatives of deceased persons, to whom this Government was indebted at the time of their death, shall not be required to take the oath prescribed by law, that the claim presented by them is just, true and original, or that the deceased whose representative he or she is, was not indebted to the Government, &c., but if it appears from the records of the first auditor, and other officers, that the said claim is just, and no account on part of the Government against such deceased, appears from such records, then such account shall be audited and allowed accordingly; Provided, That nothing herein contained shall be so construed as to permit the Treasurer to pay any draft used by the auditorial court.

DAVID S. KAUFMAN,

Speaker of the House of Representatives.

DAVID G. BURNET,

President of the Senate.

Approved February 4th, 1840.

MIRABEAU B. LAMAR.

AN ACT

To enable part owners of Land to obtain Partition thereof, and for other purposes.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That all part owners of any estates, of inheritance in lands, tenements, and hereditaments in their own rights, or in the rights of other persons, and all part owners, who may hold for a term of

life, or years with others, who may have estates or inheritance, or freehold in any lands, tenements, or hereditaments may be compelled to make partition between them, of such lands, tenements, and hereditaments as they may hold as part owners, by such lawful method as the party seeking such partition shall choose, or deem expedient; but no such partition between a part owner, or part owners, who hold estates for a term of life or years with others, who hold equal, or greater estates, shall be prejudicial to those entitled to the reversions, or remainders, after the death of the owners for life, or after the expiration of the years.

Sec. 2. Be it further enacted, That partition may be demanded by one and the same writ of all the several parcels of land or other real estate, to which the parties have titles, and execution thereupon had by the Sheriff, and three special commissioners to be appointed by the court, with the assent of the parties by allotment to each party, of part in each parcel, or of parts in one or more parcels, or of one or more individual parcels, with or without the addition of a part or parts of other parcels as shall be most for the interest of the parties in general.

Sec. 3. Be it further enacted, That after a writ of partition returned served, if the part owner, or part owners shall enter their defence (if any they have) within the ordinary term allowed by the rules of pleading, the court may proceed to examine the title of the demandant, or demandants, and the quantity demanded, and shall give judgment by default, for so much as shall appear to be justly claimed, and award a writ to make partition, which being executed by giving notice as before to the persons interested judgment final shall thereupon be given, which shall be as binding as if it had been made after a full hearing and upon a trial, unless any part owner within one year after the first judgment, or being an infant, a married woman, or person of unsound mind, or out of the Republic, within one year after the attainment of full age, death of the husband, recovery of understanding, or return to the country, respectively, by motion to the court, either admitting the demandants right, and "purport" shall show inequality in the partition, (in which case,) the court may award a new partition to be made, and that in the presence of all the parties if they choose to attend it, and the second partition shall be as binding as if the part owner had appeared and pleaded in the first instance, or else shall show sufficient matter in bar of the partition, or that the demandant hath no title to so much as he or she hath recovered, in which case, the court may suspend or set aside the judgment, and admit the part owner to appear and plead, and the cause shall proceed as if no judgment had been given, and if

upon the trial thereof, the court shall give the same judgment as the first, it shall stand confirmed, and the person or persons in whose behalf the motion was made shall be condemned to pay the cost.

Sec. 4. Be it further enacted, That they who were part owners of the lands, tenements, and hereditaments, or any part thereof, before they were divided, shall hold the same of the landlords to whom they shall be allotted by the partition in severalty under the same conditions, rents, covenants, and resolutions; and the landlords shall warrant the several parts unto the tenants, as action, for his purpart of lands, tenement, and hereditaments, demandant who was tenant, in actual possession to the tenant to the action, for his purpart of lands, tenement, and hereditaments, derived by virtue of a writ of partition, or any part thereof, shall hold for the same term, and under the same conditions and covenants, when it shall be allotted in severalty.

Sec. 5. Be it further enacted, That the representative of one jointly bound with another, for the payment of a debt, or for performance or forbearance of any act, or for any other thing, and dying in the lifetime of the settee, may be changed by virtue of such obligation, in the same manner as such representative might have been charged, if the obligors had been bound severally as well as jointly.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved 5th February, 1840.

MIRABEAU B. LAMAR.

AN ACT

For the protection of the Revenue and other purposes.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That for the present, and until otherwise provided for, that the collectorial district of the port of Galveston be, and is hereby extended to the northern, north-eastern boundary of the county of Galveston, so as to include Point Bolivar; and that the collector of said port be authorized to appoint an inspector, whose duty shall be to guard and watch over the action and proceeding of

all vessels and boats, and persons on board of either, which may approach the coast within said extended limits, and prevent smuggling, and all other frauds on the Revenue; and further, that the President be requested to instruct the Secretary of the Navy, to keep constantly employed, until otherwise provided for, one or more of the armed schooners now in commission, on the coast of Texas, from the mouth of Sabine Inlet to the mouth of the Rio Bravo del Norte, for the protection of the Revenue, which vessel or vessels shall perform the service and duties of revenue cutters, in the same manner as similar services are performed by revenue cutters of the United States.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved, 5th February, 1840.

MIRABEAU B. LAMAR.

AN ACT

To amend and to reduce into one, the several laws regulating the Post Office Department.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That there shall be, and there is hereby enacted and established a General Post Office, to be under the charge and direction of a Post-Master-General, to be nominated by the President, subject to approval or rejection of the Senate; and he shall hold his office for the term of three years, and shall give bond and security, to be approved by the President, in a sum not less than twenty-five thousand dollars, payable to the President of this Republic, or his successor in office, conditioned for the faithful performance of the duties of said office. The Post-Master-General shall have power to appoint the necessary assistants, and clerks for doing the business of his office. He shall establish Post Offices, and appoint Post-Masters at such places as he may deem expedient, on post roads that are, or may be established by law. He shall give instructions to the Post-Masters, and all other persons he shall employ, or who may be employed in any of the departments, of the General Post Office, relative to their duties. He shall provide for the carrying the mail on all post roads, that are, or may be es-

tablished by law as aforesaid, as often as he may think proper, having regard to the productiveness thereof. He shall be required to procure and furnish bags for carrying the mail over all the various routes in the Republic, with locks for the same, and a sufficient number of keys, so as to furnish one key for every Post Office. He shall obtain from the several Post-Masters their accounts and vouchers for the receipts and expenditures of their several offices once in every three months, or oftener if he think proper, shewing the balance therein in favor of, or against the General Post Office. He shall pay all necessary expenses incident to the General Post Office in consequence of mails, collection of the revenue, and in the general management thereof from the income of the General Post Office Department, if the receipts thereof be sufficient. He shall in his annual communication to the Executive of this Republic; report all the receipts and expenditures of the Department, and any deficiency in the funds necessary for the current expenses thereof, who shall submit the same to Congress, in order that they may provide the ways and means for supplying such deficiency. He shall render an account current to the Secretary of the Treasury once in every three months, of all the receipts and expenditures in said Department, to be audited and settled as all other public accounts, at the same time stating generally the condition of the Department; suggesting such improvements as in his opinion may be useful and necessary; and shall render his first quarterly accounts on the first Monday of April next. He shall prosecute, or cause to be prosecuted, all offences against the General Post Office establishment. He shall have general superintendence of the business of said Department, in all the duties that are, or may be assigned to it; Provided, That in case of the death, resignation, or removal from office of the Post-Master General, all the duties of the Department shall be performed by his assistant, chief clerk, until a successor shall be appointed to take charge of the General Post Office.

Sec. 2. Be it further enacted, That the Post-Master-General, and assistant clerks, and Post Masters, and other persons employed in and about the Department, or in the care, custody, or conveyance of the mails, shall, previously to entering upon the respective duties assigned them, take and subscribe the following oath, or affirmation in addition to the oaths required by all officers of the Government, before some person legally authorized to administer an oath; That "I will faithfully perform all the duties required of me, and abstain from every thing forbidden by the laws in relation to the establishing the General Post Office, and Post Roads."

Sec. 3. Be it further enacted, That the Post-Master-General may provide by contract for the conveyance of the mail on any road on which a stage, or waggon, or any other stage carriage shall be established; all contracts for carrying the mail, whether on horseback or otherwise, shall be for any term not exceeding two years, and at all times subject to such alteration, as to time of departure, arrival, and distances, and frequency of transportation as he may think proper, subject however, to an increase or diminution on the amount to be paid on said contract to the contractor, in ratio of increase or diminution of service required.

Sec. 4. Be it further enacted, That it shall be lawful for the Post-Master-General at pleasure to revoke any contract which may have been made for carrying the mails on any of the routes established, or to be established by Congress; but in that event the contractor or contractors shall be entitled to and receive from the Post-Master-General, in the settlement of his or their accounts such compensation as in his opinion may be just and equitable; Provided, That it shall in no case exceed the pay of one month under his or their contract, and provided also, That such revocation shall not have been annulled for failures upon the part of the contractor or contractors to comply with the stipulations of his or their contract, for violating the Post Office Law, or disobeying the instructions of the Post Office Department.

Sec. 5. Be it further enacted, That in all cases of failures to perform the trips stipulated in the different contracts for carrying the mail over the different routes in this Republic, the contractor or contractors so failing, shall forfeit and pay treble the amount which would have been due such contractor or contractors under their contracts for the transportation of the same, and the Post-Master-General is hereby required to retain the amount of all such forfeitures out of any dues to such contractor or contractors, or to sue for the same on the bonds given by such contractor or contractors in any court having cognizance of the same, unless satisfactory proof be made that such failure resulted from some unavoidable circumstance.

Sec. 6. Be it further enacted, That no other than a citizen of this Republic shall be employed in carrying the mail on any of the post roads, either as contractor, carrier, rider, or driver; any and every violation of this act shall subject the contractor for each offence to forfeit and pay the sum of one hundred dollars, one moiety thereof to the use of this Republic, and the other moiety to the use of the person who shall sue for and prosecute the same before any court having competent jurisdiction thereof:

that it shall be the duty of every ferryman, or keeper of a ferry on any water course, to pass over, free of charges, the driver or carrier of the mail, and any horse or carriage carrying the same.

Sec. 7. Be it further enacted, That if any person shall knowingly and wilfully obstruct or retard the passage of the mail, or of any driver, or carrier, or any horse, or carriage carrying the same, he shall, upon conviction thereof for every such offence, pay a fine not exceeding one hundred dollars, and if any ferryman shall by wilful neglect, or refusal to transport the mail across any ferry, hinder, or delay the same, he shall forfeit and pay for every ten minutes a sum not exceeding ten dollars.

Sec. 8. Be it further enacted, That it shall be the duty of every Post-Master-General to give public notice in one or more of the newspapers of Texas for at least four weeks before entering into any contract for carrying the mail, that such contract is intended to be closed on the day and at such place as he may designate, that sealed proposals will be received for contracts: the notices shall designate places from, and to which such mail is to be carried, and the days and hours on which it is to leave and be delivered. He shall, moreover, within thirty days after the making of any contract, lodge the duplicate thereof, together with a copy of the proposals which he shall have received respecting it, in the Department of the Secretary of State, and no contract shall be entered into for a longer time than two years.

Sec. 9. Be it further enacted, That every Post-Master shall keep an office in which one or more persons shall attend on every day on which a mail, or bag, or other packet, or parcel of letters shall arrive by land or water, as well as on such other days and hours as the Post-Master-General shall direct, for the purpose of performing the duties of his office, and it shall be the duty of all Post-Masters at all reasonable hours on every day of the week to deliver on demand any letter, paper, or packet to any person entitled to, or authorised to receive the same; and all letters brought to any office one-half hour before the making up the mail at such office, shall be forwarded therein.

Sec. 10. Be it further enacted, That no fees or perquisite shall be received by any person employed in the General Post Office on account of the duties to be performed in virtue of this office.

Sec. 11. Be it further enacted, That the following rates of postage shall be charged on all letters and packets (except such as are herein exempted) conveyed by the mails and posts of Texas, that is to say: for every letter composing a single sheet of paper, and conveyed any distance not exceeding forty miles, twelve

and-a-half cents; over forty and not exceeding one hundred miles, twenty-five cents; over one hundred and not exceeding one hundred and fifty miles, thirty seven and one-half cents; over one hundred and fifty miles, fifty cents; upon all ship letters, six and a quarter cents shall be charged in addition to the above rates, and for every package composed of more than four or more pieces of paper or thing, and weighing one ounce, quadruple those rates, and in that proportion for all greater weights; newspapers carried not over one hundred miles, one cent each; over one hundred miles, two cents each; pamphlets carried not over fifty miles, per sheet, one cent each; pamphlets carried not over one hundred miles, per sheet, one and a-half cents per sheet; pamphlets carried over one hundred miles, per sheet, two and a half cents each: all letters, newspapers, and pamphlets going out of Texas, it shall be the duty of the Post-Master to require the postage in advance.

Sec. 12. Be it further enacted, That if any Post-Master, or other person authorized by the Post-Master General to receive the postage of letters, shall fraudulently demand or receive any rate of postage, gratuity or reward, further than is provided by this law for the postage, of letters and packets, on conviction thereof, he shall forfeit and pay for every such offence, one hundred dollars, and shall be rendered forever incapable of holding any office of profit or trust under this Government.

Sec. 13. Be it further enacted, That no ship or vessel arriving at any port of Texas, where a Post Office is established, shall be admitted to report, make entry, break bulk until the master or commander shall have delivered to the Post-Masters, all letters directed to any person or persons within this Republic, under his care or within his power, which shall be brought in such ship or vessel, except such as are directed to the owner or consignee of such ship or vessel, and except also, such as are directed to be delivered at the port of delivery, to which such ship or vessel may be bound; and it shall be the duty of the Collector or other officer of the port empowered to receive entries of ships or vessels, to require of every master, owner or commander of such ship or vessel, on oath or affirmation, purporting that he has delivered, or caused to be delivered, all such letters, except as aforesaid, and if any commander, or master of any such ship, or vessel, shall break bulk before he shall have complied with the requirements of this act, every such offender shall on conviction thereof, forfeit and pay for every such offence a sum not exceeding one hundred dollars.

Sec. 14. Be it further enacted, That the Post-Master to whom such letters or packages shall be delivered, shall obtain from the person delivering the same, a certificate stating the number of letters and packets, with the name of the ship or vessel and the place from whence she last sailed, which certificate shall be reported with his quarterly accounts current to the Post-Master-General.

Sec. 15. Be it further enacted, That if any person other than the Post-Master-General, or his deputy, or person by them employed shall be concerned in setting up, or maintaining any foot, or horse, post-waggon, or any other post-carriage, or any established post-road, or any road adjacent or parallel to any established post-road, or any packet, boat, or other vessel to ply regularly from one place to another, between which a regular communication by water shall be established by law, and shall receive any letter, or packet other than newspapers, magazines, and pamphlets, and carry the same by such foot, stage-waggon, or other carriage, packet, boat or vessel, excepting on such letter or letters as may be directed to the owner or owners of such conveyance, and relative to the same, or to the person to whom any packet, or bundle in such conveyance is intended to be delivered; every person so offending shall forfeit, for every such offence, a sum not exceeding one hundred dollars.

Sec. 16. Be it further enacted, That the deputy-post-master, or other agents of the Post-Master-General shall duly account and answer to him for all postages on way-letters which shall come to their hands and for this purpose the post-riders, and other carriers of the mail, receiving any way-letters which they shall be bound to do, if presented two miles and upwards from a post-office, shall deliver the said letter or letters to the Post-Master, or his deputy at the first post-office he may arrive at, together with the postage if paid, whose duty it shall be to specify to the same as way-letters, adding six and a-fourth cents additional postage on each of such letters he may have so received, to be paid by him to the carrier who delivered them; letters directed to persons living between post-offices may be delivered by the carriers, and the postage thereof duly collected; and it shall be the duty of the carriers of the mail to take charge of all such letters as shall for that purpose be committed to him by the post-master, and collect the postage thereof, which it shall be the duty of such post-rider to pay over to the said Post-Master as it is collected, and for every letter so delivered, the same shall be allowed to receive six and a-fourth cents to his own use besides the ordinary postage; if any Post-Master, or other agent of the Post-Master-General,

shall neglect to account for the same, he or they so offending, shall on conviction thereof, forfeit for every such offence, a sum not exceeding one hundred dollars.

Sec. 17. Be it further enacted, That if any post master or other agent of the General Post Office, shall unlawfully detain, or delay, or open any letter, packet, bag, or mail of letters with which he shall be entrusted, or which shall have come to his or their possession, and which are intended to be conveyed by post, or if any such person shall secrete, embezzle, or destroy any letter, or packet entrusted to him or them as aforesaid, and which shall not contain any security for any assurance relating to money as hereinafter described, every such offender being thereof duly convicted, shall, for every such offence, be fined a sum not exceeding one thousand dollars, and be imprisoned not exceeding twelve months, according to circumstances, or aggravation of the offence; and if any person employed as aforesaid, shall secrete, embezzle, or destroy any letter, mail, or packet, or bag of letters with which he should be entrusted, or which shall have come into their possession, and are intended to be conveyed by post, containing any bank note, post-bill, or other paper expressive of value, or if any such person employed as aforesaid, shall steal, or take any of the same out of any letter, packet, bag, or mail of letters that shall come to his possession, he shall, for every such offence, be imprisoned for a term not exceeding ten years; and if any person who shall have taken charge of the mail of Texas, shall quit or desert the same before he delivers the same into the post office, kept at the termination of his route, or to some known mail carrier, or agent of the General Post Office duly authorized to receive the same, and every such person so offending, shall forfeit and pay a sum, not exceeding five hundred dollars for every such offence; and if any person concerned in carrying the mail of Texas, shall cause or procure the same to be done contrary to this act, every such offender, shall forfeit and pay for every such offence, a sum not exceeding two hundred dollars.

Sec. 18. Be it further enacted, That if any person shall rob any carrier of the mail of Texas, or any other person entrusted with such mail, or any part thereof, every such offender or offenders, shall on conviction, be imprisoned for a term not exceeding ten years; and if convicted a second time of a like offence, he or they shall suffer death; or if in effecting such robbery of the mail the first time, the offender shall wound the person having the custody thereof, or put his life in jeopardy by the use of dangerous weapons, such offender or offenders shall suffer death; and if any person shall attempt to rob the mail of Texas, assaulting

the person having the custody thereof, by shooting at him, or his horse or mule, or threatening him with dangerous weapons, and the robbery is not effected, every such offender, upon conviction thereof, shall be punished by imprisonment not exceeding ten years; and if any person shall steal the mail, or shall steal and take out any part thereof, out of any post office, or any letter, or packet, or if any person shall take the mail, or any letter or packet therefrom, or from any person, whether with or without the consent of the person having custody thereof, the same containing any article of value, or if any person shall by fraud or deception, obtain from any persons custody thereof, any mail, letter or packet, or any article of value, such offender or offenders, on conviction thereof, shall be imprisoned not exceeding three years; and if any letter, or packet not containing any article of value, on evidence thereof, out of a post office, or shall open any letter or packet, which shall have been in a post office, or in the custody of a mail carrier, it shall have been delivered to whom it is directed, with a design to obstruct the correspondence or to pry into another's business, or shall secrete or embezzle, or destroy any such mail, letter or packet, such offender, upon conviction, shall for every such offence, pay a fine not exceeding five hundred dollars, and be imprisoned not exceeding twelve months.

Sec. 19. Be it further enacted, That if any person shall rip, cut, tear, or burn, or otherwise injure any portmanteau, valise or other bag, used or directed to be used by any person acting under the authority of the Post-Master-General, or any person in whom his powers are vested in the conveyance of any mail, packet, newspaper or pamphlet, or shall draw or break any staple, or loosen any part of any lock, chain or strap attached, or belonging to any such valise, portmanteau or bag, with an intent to rob, or steal any mail, letter, packet, newspaper or pamphlet, or to render either of the same insecure, every such offender, upon conviction, shall for every such offence, pay a sum not exceeding five hundred dollars, or be imprisoned not exceeding three years, at the discretion of the court before whom such conviction is had.

Sec. 20. Be it further enacted, That every person who shall, from and after the passage of this act, procure, aid, advise or assist in the doing or perpetrating of any of the acts or crimes by this act forbidden to be done or performed, shall be subject to the same penalties and punishments as the persons are subject to who shall actually do, or perpetrate any of the said acts or crimes, according to the provisions of this act.

Sec. 21. Be it further enacted, That any person who shall be imprisoned by judgment of court under and by virtue of the seventeenth, eighteenth and nineteenth sections of this act, shall be kept at hard labor; or otherwise shall be fined and punished as the law may direct.

Sec. 22. Be it further enacted, That the Post-Masters shall respectively publish at the expiration of every three months or oftener where the Post-Master-General shall so direct, in one of the newspapers at or nearest the place of his residence for three successive weeks, a list of all the letters remaining in their respective offices, or instead thereof, shall make out a number of such lists, and cause them to be posted up at no less than five of the most public places in that vicinity, as shall appear to them best adapted for the information of the parties concerned, and at the expiration of the next three months, shall send such of the letters as there remain on hand as dead letters to the General-Post-Office, where the same shall be opened and inspected, and if any valuable papers, or matters of consequence shall be found therein, it shall be the duty of the Post-Master-General, through his deputies to return them, or if after a descriptive list thereof has been published in one of the newspapers published at the place most convenient to the supposed residence of the owner, if within Texas, the person or persons to whom such letter or letters may have been directed, and intended, shall make application therefor, it shall be the duty of the Post-Master-General, or any of his deputies upon being satisfied that the applicant is the proper owner to deliver them to such person or persons, upon the postage and expense of publication being paid, and in either case, to require from persons receiving letters to receipt to the Post-Master-General therefor, specifying in such receipt that it is for such letter or letters as may have been advertised and described, and if neither the writer nor the individual to whom the letter is addressed, shall not make demand in their own proper person, or lawful agent, within two years after the advertisement thereof as aforesaid, the said contents shall be applied to the use of Texas, until the same shall be reclaimed by the proprietor thereof, and the manner of such application to be specially stated by the Post-Master-General, to the Executive office.

Sec. 23. Be it further enacted, That all letters and packages not exceeding three pounds in weight, and newspapers conveyed in the mail, shall be under cover; if any person employed in any department of the General Post Office, shall improperly detain, delay, hinder, embezzle, or destroy any newspaper, or permit any other person to do the same, or shall open, or permit

any other person to open any mail, or packet of newspapers not directed to the office where he is employed, he shall, on conviction thereof, forfeit a sum not exceeding one hundred dollars, for every such offence; and if any other person shall open any mail, or packet of newspapers, or shall embezzle or destroy the same, not being directed to himself, or not being authorized to receive and open the same, he shall, on conviction thereof, pay a sum not exceeding fifty dollars, for every such offence; and if any person shall take or steal any packet, mail, or bag of newspapers out of any post office, or of any person having custody thereof, such person, upon conviction, shall be imprisoned not exceeding three months, for every such offence; if any person shall enclose, or conceal, a letter, or other things, or any memorandum in writing in a newspaper, or among any package of newspapers, which he shall have delivered into any post office, or to any person for that purpose, in order that the same may be carried by post, free of letter postage, he shall forfeit the sum of twenty-five dollars, for every such offence, and the letter, newspaper, packet, memorandum or other thing, shall not be delivered to the person to whom it is directed, until the amount of double letter postage is paid for each article of which the packet is composed.

Sec. 24. Be it further enacted, That the Post-Master-General be authorized to allow the Post-Masters respectively, such commission on the monies arising upon the postage of letters as shall be adequate to their respective services: Provided, said commission shall not exceed twenty-five per centum on the first hundred dollars, twenty per centum on any sum over one hundred dollars, and not exceeding three hundred dollars, and ten per centum on any sum over four hundred dollars, and not exceeding two thousand dollars, and five per centum on any sum collected, being over twenty-four hundred dollars, except to Post-Masters who may be employed in receiving and despatching foreign mails, whose compensation may be augmented not exceeding twenty-five dollars for one quarter: the Post-Master-General may allow to the Post-Masters respectively, a commission of fifty per centum on the money arising from the postage of newspapers, magazines and pamphlets; and each Post-Master who shall be required to keep a register of the arrival and departure of the mails, shall be allowed two dollars for each monthly return thereof to the General Post Office.

Sec. 25. Be it further enacted, That if any Post-Master, or other person authorized to receive the postage of letters, shall neglect or refuse to render his accounts, and pay over to the Post-Master-General the balance by him due at the end of the

three months, it shall be the duty of the Post-Master-General to cause a suit to be commenced against the person so neglecting or refusing; and if the Post-Master-General shall not cause such suit to be commenced within six months from the end of every such three months, the balance due from every such delinquent, shall be charged to and be recoverable from the Post-Master-General; that all suits which shall hereafter be commenced for the recovery of debts, or balances due the General-Post-Office, whether they appear by hand or obligation, shall be made in the name of the existing, or other preceding Post-Master-General, or otherwise, shall be charged in the name of the Post-Master-General of Texas, and that certified under the seal of the General-Post-Office, of the accounts current of the several Post-Masters shall be admitted in all suits brought by the Post-Master-General for the recovery of debts, or balances due from Post-Masters or other persons, in like manner, copies of such bonds, or accounts current as are lodged in the department of State, under the seal of the General-Post-Office Department, shall be admitted as evidence.

Sec. 26. Be it further enacted, That all letters and packets to and from the following officers of this Republic, shall be received and conveyed by post, free of postage: each Post-Master; Provided, the package does not exceed one ounce in weight; the President and his cabinet officers; the Vice-President, and the members of both branches of Congress of this Republic, during the session of congress, and thirty days thereafter, and the Secretary and other officers of congress during the time of their actual services; the Treasurer, and Post-Master-General; all officers of the army and navy, collectors and officers of the revenue, when communicating on subjects connected with public service, all of whom shall receive their newspapers by the public post, free of postage; Provided, That no letter or packet, from any public officer shall be conveyed by post, free of postage, unless he shall frank the same, by writing his name and office on the outside of such letter, or packet, as in case of officers of the army, navy, and collectors, and officers of revenue on public service.

Sec. 27. Be it further enacted, That if any person shall frank letters other than those written by himself, or by his order, he shall, on conviction thereof, pay a fine of fifty dollars; and if any person shall counterfeit the frank, or hand writing, or cause the same to be done in order to avoid the payment of postage, each person so offending, shall, for every such offence, pay a fine of one hundred dollars: Provided, That every printer of a newspaper may send one paper to each and every other printer of a

newspaper in Texas, and send and receive out of Texas any number of newspapers not exceeding thirty, free of postage, under such regulations as the Post-Master-General may provide.

Sec. 28. Be it further enacted, That if any Post-Master, or other person, who shall receive, open, or despatch mails, shall neglect to render accounts thereof for one month after the time, in manner and form provided by law, and by the Post-Master-General's instructions, he shall forfeit and pay double the value of the postages which shall have arisen at the same office in equal proportion of time, previous or subsequent thereto, or in case no amount or account shall have been rendered at the time of trial of such case, then such sum as the court and jury shall estimate as equivalent thereto, to be sued for and recovered by the Post-Master-General in an action on the case.

Sec. 29. Be it further enacted, That all pecuniary penalties and forfeitures incurred under this act, not otherwise provided for, shall be for the use of the Republic of Texas.

Sec. 30. Be it further enacted, That it shall be lawful for the Post-Master-General to make provision when it may be necessary for the receipt of letters, and packets intended to be conveyed by any ship, or vessel beyond sea, or from any port in Texas to another port therein, and the letters so received shall be formed into a mail or packet, sealed up and directed to the Post-Master of the port to which such ship or vessel shall be bound, and for every letter or frank so received, there shall be paid at the time of its reception, a postage of six and a-quarter cents each, which shall be for the use of the Post-Masters respectively, receiving the same, and the Post-Master-General may make arrangements with the Post-Masters in any foreign country, for a reciprocal delivery of letters, newspapers, packets, and pamphlets through the Post Office Department in any manner he may deem expedient and necessary.

Sec. 31. Be it further enacted, That for every letter lodged at any Post Office not to be carried by post, but to be delivered at the place where it is lodged, the Post-Master shall receive six and a-quarter cents from the person to whom it may be delivered.

Sec. 32. Be it further enacted, That the Post-Masters and persons employed in the transportation of the mail, shall be exempt from militia duty, serving as jurors, or working on public highways.

Sec. 33. Be it further enacted, That all causes of action arising under this act may be sued for, and all offenders be presented before the proper judicial officers of this Republic, they having competent jurisdiction by the laws of this Republic of the

trial of claims and demands of as great value, and crimes of as great an extent, and such judicial officers shall take cognizance thereof, and proceed to judgment, and award execution as in other cases.

Sec. 34. Be it further enacted, That in all suits, or causes of action arising under this act, the courts shall proceed to trial and render judgment at the first term after such suit shall have commenced; Provided always, That whenever process shall not have been commenced at least ten days previous to the return day of such term, the defendant shall be entitled to one continuance, if the court on the statement of such defendant, may in such case deem it expedient; Provided also, That defendant in such suit shall make affidavit that he has a claim against the General Post Office, not allowed by the Post-Master-General, although submitted to him, conformably to the requisitions of the Post-Office Department, and shall specify such claims in his affidavit, that he could not be prepared for the trial at such term for the want of evidence, the court being satisfied in those respects, may grant a continuance until the next succeeding term.

Sec. 35. Be it further enacted, That it shall be the duty of the Post-Master-General to report annually of every post-road and office which shall not from the second year have produced one third of the amount of its expenditures.

Sec. 36. Be it further enacted, That mail routes which have been established between _____ and _____, Jasper and Belgrade, and all others not herein provided for, be and the same are hereby discontinued, and that the following and none other shall be considered public routes on which the Texas mails are to be transported in the present year, one thousand eight hundred and forty, viz.

No. 1. From Houston to Galveston, via Harrisburg, Lynchburg, Spilman's Island, and New Washington.

No. 2. From Houston to Cincinnati, via Spring Creek, Mount Vernon and Huntsville.

No. 3. From Cincinnati to Nacogdoches, via Neches, Mustang Prairie, Crockett and Mount Sterling.

No. 4. From Nacogdoches to McClannahan's Post Office, Louisiana, via San Augustine, Milam, Gaines' Ferry and Sabine Town.

No. 5. From Nacogdoches to Apperson's Ferry.

No. 6. From Apperson's Ferry to Jonesboro', via Myrtle Springs, Dekalb and Clarksville.

No. 7. From Jonesboro' to seat of justice Fannin County, via Franklin, Johnson, Raleigh and Lexington, Fannin County.

..No. 8. From seat of justice Fanin County to Coffee's Station, via Warren.

No. 9. From Clarksville to seat of justice Fannin County, via Lexington, in Red River County, Shelton's and Englishe's.

No. 10. From San Augustine to Post Caddo, via Shelbyville, Shelton's and Elysian Fields.

No. 11. From Houston to Swartwout, (Trinity River.)

No. 12. From Liberty to Lyons' Post Office, Louisiana, via Pine Island, Pattillo's, Richland, Jefferson and Beaumont.

No. 13. From Jefferson to Hamilton (Sabine River,) via Jasper, Zavala, San Augustine and Shelbyville.

No. 14. From Jasper to Salem.

No. 15. From Houston to Egypt, via Hodges' and Richmond.

No. 16. From Egypt to Goliad, via Texana, and Victoria.

No. 17. From Matagorda to Egypt, via Preston's and Peach Creek.

No. 18. From Egypt to La Grange, via Columbus.

No. 19. From Velasco to San Felipe, via Crosby's, Brazoria, Marion, Orozimbo and Big Creek.

No. 20. From San Felipe to La Grange, via Dr. Punchard's, Centre Hill, Ceder Creek, Washington, Independence, Gay Hill, Oak Grove and Rutersville.

No. 21. From Independence to Franklin, via Mound Prairie, Fort Oldham, Tenoxtitlan and Nashville.

No. 22. From Montgomery to Washington, via Rusk and Fanthorp's.

No. 23. From Brazoria to Matagorda, via Williams' at Caney Crossing.

No. 24. From Huntsville to Swartwout, via Carolina.

No. 25. From Houston to Washington, via Myrtle Turf and Groce's Retreat.

No. 26. From Crockett to Fort Houston, via Bennett's Post Office and San Pacero.

No. 27. From Victoria to Live Oak Point, via Lamar.

No. 28. From Quintana to Galveston, via San Louis.

No. 29. From City Sabine to Beaumont.

No. 30. From Austin to Crockett, via Nashville, Franklin, Dunn's Post Office, Tinnen's, Robins' Ferry (Trinity River,) and Mustang Prairie.

No. 31. From Austin to San Antonio, via Gonzales, and Seguin.

No. 32. From Gonzales to Victoria.

No. 33. From Austin to Houston, via Comanche, Bastrop, Primm's, La Grange and San Felipe.

No. 34. From Texana to La Grange, via Stapp's, Zumalts', Chadoins' and Lyons'.

No. 35. From Quintana to Texana, via Matagorda.

No. 36. From Swartwout to Jasper, via Barclay's: and that the Post-Master-General cause a mail to be carried on such of the above routes as are not at this time under contract, and the Post-Master-General shall regulate and determine as to the roads on which the said mails shall be carried, how often, and all other arrangements relating thereto, as he may think proper.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.

DAVID G. BURNET,
President of the Senate.

Approved, 6th February, 1840.

MIRABEAU B. LAMAR.

AN ACT

To regulate the proceedings in Civil Suits.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the adoption of the common law shall not be construed to adopt the common law system of pleading, but the proceedings in all civil suits shall, as heretofore, be conducted by petition and answer; but neither petition nor answer shall be necessary in a cause to recover money before a justice of the peace.

Sec. 2. Be it further enacted, That when a sheirff, or any other officer legally authorised, may have a writ and petition, subpoena, notice or other process whatsoever to be served on any person, and such process shall not require the body of such person to be taken into custody for safe keeping, and the person on whom the process may be required to be served, be not found at his or her residence, it shall be lawful for the officer to serve such process by leaving a copy thereof at the residence of such person, with some white member of his or her family above the age of fourteen years.

Sec. 3. If the defendant do not appear either in person or by attorney, on the second day of the term, and file his answer, the plaintiff may take a judgment by default against him.

Sec. 4. If three days after this first judgment has been rendered, the defendant neither appears nor files his answer, a

definitive judgment will then be given for the plaintiff, provided he prove his demand as in all other cases.

Sec. 5. If the defendant on the very day when a definitive judgment was to have been recorded against him appear and file his answer, the first judgment taken shall be set aside

Sec. 6. When the demand is liquidated and proven by writing, judgment by default final may be taken at the first term of the court, if actual notice of the suit has been given to the defendant.

Sec. 7. If the demand is unliquidated, and personal notice has been given, judgment by default may be taken at the first term of the court, and a jury shall be immediately empanelled to assess the damage to the plaintiff.

Sec. 8. If personal notice has not been given, a judgment by default shall not be taken before the second term of the court in which the suit is brought.

Sec. 9. No plea in abatement shall be admitted or received unless the party offering the same shall prove the truth thereof, by oath or affirmation, as the case may require.

Sec. 10. The defendant, in all actions may plead as many several matters, whether of law or of facts, as he shall think necessary for his defence.

Sec. 11. An execution, writ or other process appearing to be duly served in other respects, shall be deemed good, although it be not directed to any sheriff.

Sec. 12. In every civil suit in which sufficient matter of substance may appear upon the petition, to enable the court to proceed upon the merits of the cause, the suit shall not abate for want of form; the court shall, in the first instance, endeavor to try each cause by the rules and principles of law; should the cause more properly belong to equity jurisdiction, the court shall, without delay, proceed to try the same according to the principles of equity. The pleadings of every cause in the district, or in any inferior court, shall be amended under the direction of the court, but no amendment shall prevent a cause from being tried at the same term at which it may be made, unless the court shall be satisfied that such an amendment will operate as a surprise to the opposing party. If the cause be in the supreme court, the court shall decide the same as if there had been no defect of form, provided the record shall present sufficient matter of substance to enable the court to decide the cause upon its merits, provided that nothing herein contained shall be so construed as to prejudice the right of the parties to a trial by jury.

Sec. 13. By the exception of non-tenure of parcel of any

lands or tenements, for which any action or suit may be brought, the writ shall not be abated, but for the quantity of the non-tenure, which shall be alledged.

Sec. 14. When there are several counts, one of which is faulty, and entire damages are given, the verdict shall be good, but the defendant may apply to the court to instruct the jury to disregard the faulty count.

Sec. 15. After issue joined in an ejectment on the title only, no exception of form or substance shall be taken to the petition in any court whatsoever.

Sec. 16. No judgment after the verdict of twelve men shall be stayed or reversed for any defect of form.

Sec. 17. Where in the record of any judgment or decree of any district court there shall be any mistake, miscalculation or misrecital of any sum or sums of money, or of any name or names, and there shall be among the records of the proceedings in the suit in which such judgment or decree shall be rendered, any verdict, bond, bill, note or other writing of the like nature or kind, whereby such judgment or decree may be safely amended, it shall be the duty of the court in which such judgment shall be rendered, and the judge thereof in vacation, to amend such judgment or decree thereby, according to the very truth and justice of the case. Provided, That the opposite party, his agent or attorney in fact or at law, shall have had reasonable notice of the application for such amendment, and if the transcript of such judgment, or decree at the time of such amendment, or at any time thereafter shall be removed to the supreme court, it shall be the duty of that court upon inspection of such amended record to be brought before it by certiorari, if need be affirm such judgment, if there be no other error apparent on such record.

Sec. 18. Where any bond taken by virtue of any distress for rent or execution by miscalculation or mistake, shall be conditioned for a larger sum of money than by law ought to have been required thereby, or where a verdict shall be rendered for more damages than the plaintiff shall have demanded by his suit, and judgment shall be rendered accordingly, and the court in which said judgment shall be rendered, shall have adjourned to another term, without release of such excess having been made, it shall be lawful for the plaintiff, at any time before the record of such judgment shall be removed in an appellate court at any future term of the court in which judgment shall be rendered, to release in open court any such excess; or he may in vacation release the same by deed under his hand and seal, witnessed by the clerk or deputy clerk of such court, and filed of record among

the papers of the cause, and such release, made in either of the forms aforesaid, shall cure any error of such excess.

Sec. 19. If the record of any such judgment shall be removed in an appellate court before such a release shall be made, it shall be competent for the defendant in error to make such release as aforesaid in the appellate court, and thereupon the said court after reversing the judgment, shall proceed to give such judgment as the court below ought to have given, if the release had been filed therein.

Sec. 20. If any action be brought on a bond or other writing filed in any suit brought thereupon in any other court of this Republic, it shall be sufficient for the plaintiff to file with his petition, a copy of such bond or other writing, attested by the clerk of the court in which the original may be filed, and the defendant or defendants shall be obliged to plead thereto in like manner as if the original bond or writing was filed, and such copy shall be admitted as evidence on the trial; If however, the defendant or defendants shall plead and file an affidavit under oath, that the original bond or writing is not his, her or their deed, the clerk of the court having such original papers in his custody, shall on being summoned as a witness, attend with the same on trial of the issue, for the inspection of the jury.

Sec. 21. In controversies affecting lands, tenements or hereditaments, possession of part shall not be construed as possession of the whole, when any actual or adverse possession can be proved.

Sec. 22. Interpreters may be sworn truly to interpret when necessary.

Sec. 23. Papers read in evidence, though not under seal, may be carried from the bar by the jury.

Sec. 24. Every person desirous of suffering a non-suit on trial shall be barred therefrom, unless he do so before the jury retire from the bar.

Sec. 25. New trials may hereafter be granted, as well when the damages are manifestly too small as when they are excessive.

Sec. 26. Not more than two new trials shall be granted to the same party in the same case.

Sec. 27. All vouchers, views, (?) essions, and also trials by wager of battle, and wager by law, be and are hereby taken away and repealed.

Sec. 28. In all actions of assault and battery and slander, commenced and prosecuted in the district court, if the jury find under the sum of twenty dollars, the plaintiff in such case shall not recover any costs.

Sec. 29. On all motions, the court may give or refuse costs, at their discretion, unless where it is otherwise provided by law.

Sec. 30. In all cases of law, except motions where judgment shall be given for the defendant or appellee, he shall recover his costs against the plaintiff or appellant, and have execution for the same, and in all such cases where judgment shall be given for the plaintiff or appellant, if not otherwise provided by law, he shall recover his costs against the defendant or appellee and have execution for the same.

Sec. 31. When any plea in abatement shall upon argument in any court of law, be adjudged insufficient, the plaintiff shall recover full costs to the time of overruling the plea, and when by any interlocutory judgment or any other part of the pleadings, shall be judged insufficient, all costs occasioned by such insufficient pleading, shall be adjudged against him who committed the fault.

Sec. 32. A fee of one dollar for each legal notice proved to have been delivered in any cause, whether at law or equity, shall be taxed in the bill of costs.

Sec. 33. All taxes imposed on law proceedings, shall be included in the bill of costs.

Sec. 34. The law of costs shall not be inter-preted as penal laws.

Sec. 35. When any party may be dissatisfied with the decision of a cause in any inferior court of this Republic, and may desire to appeal therefrom, such party shall have twenty days after the term of the court at which such cause was tried, to file the appeal bond required by law.

Sec. 36. In case the party be unable to give the appeal bond required, such party may nevertheless appeal by giving security for no more than the costs and damages of the appeal; but in that case the judgment of the court below, shall operate as a lien upon all the property of the appellant, and the sheriff shall take possession of his personal property, and keep possession of the same, or so much thereof as will be sufficient to satisfy the judgment of the appellate court, during the proceeding of the appeal, unless the appellate should execute a bond made payable to the appellee, with at least one good and sufficient security (whose solvency is to be judged by the sheriff,) conditioned that such personal property shall be forthcoming to be sold in satisfaction, or part satisfaction of the judgment that may be rendered by the appellate court.

Sec. 37. The appellant at the hearing of the cause in the court of appeals, shall furnish to each of the judges who may sit

to hear the same, a true copy of the report of the facts agreed on or certified by the judge of the court below, and the facts shall be agreed on by the adverse parties or their attorneys or certified by the judge before the rising of the court below.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

Concerning Executions.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That from and after the rising of every court it shall be the duty of the clerk thereof to tax the costs of suit in every case incurred by the successful party, and for which judgment shall be rendered, and issue execution, and endorsing on each execution issued, the several items contained in the bill of costs, in intelligible words and figures.

Sec. 2. Be it further enacted, That it shall be the duty of the clerks of the several courts of this Republic to keep an execution docket, in which shall be entered the names of cases, the time at which execution issued, the amount therefor, to whom and when delivered, and the returns which may be made thereon by the sheriff, or such officer as may receive the execution, which said docket shall be subject to the inspection of any person interested at any time when required, and any clerk who shall fail to keep such a docket, or shall neglect to make the entries, shall be liable to a fine of one hundred dollars, to be recovered by the party complaining by motion before the court, five days previous notice being given thereof.

Sec. 3. Be it further enacted, That should the defendant in any judgment of the court be about to leave the county in which judgment may be rendered, and before rising of the court, the court shall order execution to be immediately issued, upon an affidavit being made and filed with the court of that fact.

Sec. 4. Be it further enacted, That all Executions shall be made returnable at the next term of the court and the defend-

ant or his agent in all cases shall have the right to designate the property, and if the defendant shall fail or refuse to designate the same, then the levy shall be made in the following manner: First on personal or moveable property, then on uncultivated lands, then on slaves, and lastly on the improved lands or home-stead of the defendant, provided that in no case shall the execution be sent out of the county where judgment is obtained, unless there is not sufficient property within the limits of the same to satisfy the amount of the judgment, interest and costs.

Sec. 5. Be it further enacted, That whenever any property shall have been seized by virtue of an execution, it shall be the duty of the sheriff or other officer to advertise the same, if it be personal property, at least ten days, by advertising the same at three public places in the county, one of which shall be the place where the property is sold, if it be slaves or lands, twenty days, by publication in some newspaper, if there be any published in the county, and also by advertisements posted up, one at the court house of the county, provided that all sales of lands and negroes shall be made at the court house door of the county in which the sales take place, on the first Tuesday, or the following day of the month, between the hours of ten o'clock A. M., and sundown; and provided further, that all other property may be sold on the premises where it is seized in execution.

Sec. 6. Be it further enacted, That if on the sale of the property, more money is received than is sufficient to pay the amount of the execution, or executions in the hands of the sheriff or other officer, the surplus shall be immediately paid over to the defendant, his agent or attorney.

Sec. 7. Be it further enacted, That whenever an execution is levied upon property, the defendant shall have the right to retain the possession of the same, upon giving bond with good security, payable to the plaintiff in double the amount of debts and costs, conditioned for the delivery of the property to the plaintiff on the day of sale.

Sec. 8. Be it further enacted, That if the defendant shall fail to deliver the property so bonded, it shall be the duty of the sheriff to return the bonds to the clerk of the court, from which execution issued as aforesaid; whereupon said clerk shall issue execution against the principal and sureties on the bond for the amount of the debt and costs, upon which said execution, no delivery bond shall be taken; which fact shall be endorsed by the clerk on the execution.

Sec. 9. Be it further enacted, That it shall be the duty of the sheriff to endorse on the execution the day on which it came

into his hands, and if he received more than one on the same day and against the same person, he shall number them as received, and on failure he shall be liable to pay twenty per cent. on the amount of the execution, together with such damages as the plaintiff in execution may sustain by such failure to number; to be recovered by the plaintiff from him and his sureties, by giving five days notice that a motion will be made to this purpose at the next term of the court from which the execution issued.

Sec. 10. Be it further enacted, That should any sheriff, or other officer, fail or refuse to pay money collected under an execution, when demanded by the person entitled to receive the same, he shall be liable to pay ten per cent. per month on the amount so collected, besides interest and costs which may be recovered of him and his sureties, by motion before the court from which said execution issued; five days previous notice being given.

Sec. 11. Be it further enacted, That it shall be the duty of the sheriff to keep securely all property levied on by him for which no delivery bond has been given, and if any loss should result to any party interested by his negligence, he shall be liable to pay the value of the property so lost, and ten per cent. damages thereon, to be recovered by the party injured, before any court of competent jurisdiction; five days previous notice thereof being given.

Sec. 12. Be it further enacted, That whenever final judgment shall be rendered by the supreme, district or county courts of this Republic it shall operate as a lien on all the property of the defendant, situated and being in the same county where judgment is rendered, from the day of the date of the judgment, provided that said lien shall cease to operate, if execution be not issued out within twelve months from the date thereof, and due diligence be not used to collect the same.

Sec. 13. Be it further enacted, That when judgment shall be obtained before the supreme, district, county or justices court of this Republic, for any debt or damages, and the person against whom such judgment shall be obtained shall not have sufficient property within the county where the judgment shall be rendered to satisfy the execution of the plaintiff, it shall be lawful to issue execution, directed to the sheriff or other legal officers of any county in this Republic where the defendant may have property, which said sheriff or other officer to whom said execution may be directed, is hereby empowered and required to serve and execute the same, and shall make return thereof to the court where the judgment was rendered.

Sec. 14. Be it further enacted, That, whenever a judgment shall have been rendered by any court of this Republic, if the plaintiff, his agent or attorney shall make affidavit before the court or the clerk thereof in which judgment was obtained, that the defendant or defendants hath or have no property within the knowledge of such affiant, in his or their possession, and that such affiant has just reason to believe that another person or persons is or are indebted to said defendant or defendants, or hath or have effects of such defendant or defendants in his or her hands, it shall be lawful for the court or the clerk to cause the person or persons supposed to be indebted to, or supposed to have any effects of said defendant or defendants to appear at the next term of such court as garnishee or garnishees, and said court shall examine and proceed against said garnishee or garnishees in the same manner as prescribed by law against garnishees in original attachments.

Sec. 15. Be it further enacted, That when the day of sale shall have arrived, it shall be the duty of the clerk of the district court, or in his absence, the Chief Justice of the county court, or in his absence the clerk of the county court, or in his absence, some justice of the peace, at the request of the sheriff, coroner or constable, to appoint three discreet, disinterested men, citizens and freeholders of the county, to appraise the property levied on by virtue and authority of an execution, which appraisers shall be sworn by the sheriff, coroner or constable, or by any officer authorised to administer an oath, and shall assess the value of the property taken under execution at its fair cash price, which assessment shall be reduced to writing, signed by the appraisers or a majority of them, and be returned with the execution.

Sec. 16. Be it further enacted, That the property levied on shall then be offered for sale for cash, to the highest bidder, and if the property be improved lands or slaves, it must bring two thirds of the appraised value or no sale shall be made for cash, but any other species of property may be sold if the highest bid amounts to one-half the appraisement.

Sec. 17. Be it further enacted, That if the highest bid does not amount to two-thirds of the appraised value in cash, the sheriff, coroner or other officer shall then advertise the same again for the ensuing sale day, if practicable, and that the same shall be sold to the highest bidder for what it may bring, on a credit of twelve months, bearing the same rate of interest as that recovered on the judgment, and the purchaser shall be required to give bond with two good securities for the payment of the purchase money; which bond shall be returned with the execution to the

court from which the same issued; shall be a mortgage on the property purchased, and shall have the force and effect of a judgment, upon which execution may issue without any other formality against the principal and securities to the same, if the same be not punctually paid, and by virtue of this execution the property first sold, or any other property belonging to the principal and sureties may be seized and sold for cash without any appraisal, and upon this execution the clerk shall endorse that no delivery bond or security whatever shall be taken.

Sec. 18. Be it further enacted, That if any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the same, he shall be liable to pay to the plaintiff or plaintiffs in execution, twenty per cent on the value of the property thus bid off, besides costs to be recovered before the court whence the execution issued by motion, five days previous notice being given to him or her that such motion will be made, and should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution, all loss which he sustains thereby, to be recovered as above in this section.

Sec. 19. Be it further enacted, That when the terms of the sale shall not be complied with by the bidder, the sheriff shall proceed to sell the property again on the same day, if there be sufficient time, but if not, he shall readvertise the same for the next succeeding regular day of sale.

Sec. 20. Be it further enacted, That when the property is sold on a credit of twelve months, if the proceeds is more than sufficient to pay the execution, interests and costs, the purchaser shall also execute a bond as provided in the _____ section of this act, payable to the defendant in execution, for the excess on which the same summary remedy may be had as is provided in favor of plaintiff in execution, and the property may be seized and sold in like manner.

Sec. 21. Be it further enacted, That when a sale has been made and the terms complied with by payment of the price on executing the contemplated bond, the sheriff, coroner or constable shall make and deliver to the purchaser a conveyance of all the right, title, interest or claim which the defendant in execution had in and to the property sold.

Sec. 22. Be it further enacted, That justices of the peace shall have power, and they are hereby authorised to issue executions against lands and tenements as well as goods and chattels, and when such execution shall be levied upon lands and tene-

ments, the same proceedings shall be had thereon as provided for executions in the hands of sheriffs by this act; but when levied upon goods and chattels, the same proceedings shall be had thereon as now required by law, adhering nevertheless to the mode of advertising prescribed in this act.

Sec. 23. Be it further enacted, That "Executions" (executors?) administrators and guardians shall observe and be governed, so far as it relates to the mode of advertising their sales, by the provisions of this act, and executors, administrators and guardians shall have the benefit of this law against persons who bid off property and do not comply with the terms of sale.

Sec. 24. Be it further enacted, That all laws and parts of laws heretofore passed on the subject of executions be and the same are hereby repealed.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

Requiring retailers of Spiritous Liquors to pay License Tax.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That any person wishing to keep a tavern or house of entertainment, in which spiritous liquors be used and disposed of in quantities less than one quart, shall apply to the Chief Justice of the county in which he or she resides, requesting a license therefor for one year; and if such Chief Justice, upon due investigation, be satisfied that he or she so applying, are of sufficient probity, and not addicted to any gross immorality, he may order the license to be issued to the applicant; or if the applicant present to the Chief Justice the certificate of three known and respectable citizens, (if the applicant be unknown by said Chief Justice, he may order the license; Provided, in each case the applicant enters into bond, with security to be approved by the Chief Justice, of the following tenor, to wit: Know all men by these presents, that we, A. B., C. D. and E. F., are held and firmly bound unto the President of the Republic of Texas, in the sum of two thousand five hundred dollars, to be paid to the said President or his

successors, for which payment, well and truly to be made, we jointly and severally bind and oblige ourselves, our heirs, executors, administrators and assigns, firmly by these presents. Signed and sealed with our seals this day of . The condition of the above obligation is such that whereas the above bounden A. B., hath obtained a license to keep a tavern or house of entertainment at . If therefore, the said A. B., doth constantly keep a respectable and orderly house, and doth prohibit and prevent gaming, quarrelling and other misconduct, within the premises of said tavern or house of entertainment, during and for the term of one year from the day of then this obligation to be void, otherwise to remain in full force; and in case of a breach of, or non-compliance with the condition, or other forfeiture of said bond, it shall be lawful for any person, in the name of the President, to sue for and recover the penalty of said bond, and apply one half thereof to his or her own use, and the other half to the use of the county where the case of action may arise.

Sec. 2. Be it further enacted, That every person receiving a license to sell by retail, wine, rum, brandy, whiskey, gin, cordials, or other description of spiritous or vinous liquors, in smaller quantities than one quart, shall previous to receiving the same, pay to the Clerk of the county in which he, she or they may reside, for the use of the Republic, two hundred and fifty dollars, for such license, besides a further sum of five dollars to the clerk for his fees; and any person or persons, from and after the first day of June next ensuing, who shall keep a tavern, ordinary, tipling house, or other description of establishment for entertainment or for the sale of spiritous liquors by retail, and shall sell deliver or otherwise dispose of wine, rum, brandy, whiskey, cordials, or any other description of spiritous liquors in smaller quantities than one quart; without having first obtained a license therefor, as aforesaid, such person or persons shall be liable to an indictment for keeping a tipling house, and for a contravention of this act; and upon conviction thereof in the District Court, shall be fined one thousand dollars and imprisoned for not less than three months, at the discretion of the court; Provided, That this act shall not be so construed as to extend to those who may sell wine by the bottle, when it is purchased and removed from the place of sale, and not drank upon the premises.

Sec. 3. Be it further enacted, That any person licensed under this act, to retail spiritous liquors, who shall employ, permit or suffer any other person or persons in any other house, shed or tent, belonging to or hired, used or occupied by such licensed

person to sell, retail or otherwise dispose of any description of spiritous or vinous liquors, with a view to contravene the spirit and intent of this act under the privileges of such licensed person, shall upon conviction thereof in the District Court, suffer the same penalties as provided for in the foregoing section.

Sec. 4. Be it further enacted, That every person licensed to sell spiritous liquors by retail, under the provisions of this act, shall if the establishment kept, be a tippling shop or bar without entertainment, place over the door of such establishment a painted sign, with the following words painted thereon, full and legible, "Licensed to retail," and if the establishment be a tavern, hotel, or other house of entertainment, such sign shall be put up in the bar room of such tavern, hotel or house of entertainment, and every person offending against, or failing to comply with the provisions contained in this section, shall forfeit and pay a penalty of twenty-five dollars, recoverable before any Justice of the Peace; one-half of which sum for the use and benefit of the informer, and the other half for county purposes.

Sec. 5. Be it further enacted, That all monies collected from the sale of licenses provided under this act, and all penalties collected for contraventions, and collected by the District Courts, shall respectively be paid over to the Secretary of the Treasury, in the same manner as are the revenues and penalties paid and collected under other acts.

Sec. 6. Be it further enacted, That the provisions of this act shall not affect those who at this time have license for retailing, until such license has expired; and all laws now in force, imposing taxes for the use of the Republic, upon retailers of spiritous liquors, be and the same are hereby repealed.

DAVID S. KAUFMAN,

Speaker of the House of Representatives.

DAVID G. BURNET,

President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

AN ACT

Defining the duties of the officers of the Treasury Department.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That there shall be until otherwise provided by law, in the De-

partment of the Treasury, the following officers, viz:—a Secretary of the Treasury, to be deemed the Head of the Department, two Auditors, one Comptroller, a Treasurer, a Commissioner of Revenue, and Stock-Commissioner.

Sec. 2. Be it further enacted, That it shall be the duty of the Secretary of the Treasury to furnish such instructions to the subordinate officers of the Treasury Department, as will insure a strict performance of the duties required of them, by law; to superintend, generally the collection of the revenue, and disbursement of the public money; to prepare and lay before Congress, at every session, a report on the subject of finance, containing a full and explicit statement of the receipts and expenditures of the preceding year, ending the 30th day of September, showing the amounts which have been collected from each of the several sources of revenue, and the expenses of collecting the same, together with the sums which have been paid and charged to the several appropriations; the balance of each appropriation unexpended, and the amount of money in the Treasury; to prepare and report estimates of the revenue, and expenditures of the ending year, and of the whole amount of money which will be subject to the disposition of the Government in the year to which the estimates apply; to digest and prepare plans for the support of the public credit, and for improving and increasing the revenue from time to time, as the policy of the country may require; to notify the Comptroller, Auditors, and Treasurer, of all appropriations of money made by law; to make report and give information to either branch of the legislature, respecting all matters referred to him by the Senate or House of Representatives, and generally to perform all such services as appertain to his office, or which he may be required to perform, by the President or Congress.

Sec. 3. Be it further enacted, That it shall be the duty of the Auditors to receive and examine all public accounts, not hereinafter required to be examined by the Commissioner of Revenue; to certify the balance, and transmit the accounts, with the vouchers, to the Comptroller, for his approval; to countersign and register all warrants drawn by the Comptroller on the Treasury, and all audited certificates issued, as hereinafter provided, on balances against the Republic, for the payment of which, no money is appropriated; to keep accounts with all disbursing officers, and others to whom money may be advanced, or who now are, or may hereafter become indebted to the Republic,—excepting such persons as are, herein required to render their accounts to the Commissioner of Revenue; to notify delinquents to pre-