which they can be identified. The testimony shows that in running from the north-east corner of the Moore survey to the south-west corner of survey No. 95 a surveyor would be compelled to pursue a wholly different course, and traverse a much shorter distance, than called for in the field-notes of the Moore survey. It further appears from the testimony of the witness Foote that, if the Moore survey be located according to its calls for the south-west corner of survey No. 95, thence running west and south with the north and west lines of surveys 96 and 75, it would close at a point so far north of its beginning as to exclude from it about 1,000 acres from its lower end, and it would not conform to the configuration of the river surveys. It is proper, therefore, to ignore the call for the south-west corner of the survey No. 95. This survey was evidently called for through mistake. The north line of the Moore survey being established and identified, the remaining lines should be established by course and distance, though this may involve a disregard for another survey called for through mistake. Boon v. Hunter, 62 Tex. 582; Duff v. Moore, 68 Tex. 270, 4 S. W. Rep. 530; Gerald v. Freeman, 68 Tex. 201, 4 S. W. Rep. 256; Freeman v. Mahoney, 57 Tex. 626. The surveyor, Taylor, applied this rule in ascertaining the quantity of land actually embraced in the contract of sale by appellee to appellant. The court evidently also accepted it as correct, otherwise it could not have found the deficiency of 152½ acres. An inspection of the record, of the evidence of Taylor, and the map prepared by him, indicates that this deficiency depends upon the fixing of the east line of the Lovic P. Moore survey as by Taylor, ignoring the call for the south-west corner of survey No. 95.

The question of fact then arises: Did the appellant get from the appellee the land, 2,420.49 acres, which the latter undertook to convey to him? Appellant testified, without contradiction, that appellee, in proposing to sell the land to him, told him that he owned 2,420.49 acres out of the northern portion of the Lovic P. Moore survey; that appellee rode across the land with appellant, and pointed out a fence between himself and C. D. Foote, which appellee said was his south boundary line, and the dividing line between the portion of the Moore survey owned by him and the portion owned by Foote; that the boundary line so shown was straight, had no offsets in it, and included a tract of 102 8-10 acres, now claimed by Broome. The surveyor, Taylor, testified that running the lines of the Moore survey, as he did, it conflicts with the "S. P. R. R. survey No. 96," 162.1 acres; that it does not include the Broome tract of 102.8 acres; that, leaving out these two tracts, the northern portion of the Moore survey, —that is, the portion north of a line running west from the north-west corner of the "S. P. R. R. survey No. 75," (which line is the north boundary line of the Foote tract,)—would include 2,106.7 acres; that between this line and the north line of C. D. Foote's fence are 58 acres of the Moore survey. This evidence, which is undisputed, constrains us to the conclusion that, instead of a deficiency of 152.1 acres, as found by the court, there is a deficiency of 313.3 acres in the tract which appellee contracted to sell to appellant. Appellee undertook to convey this tract of 2,420.49 acres by good and sufficient deed, by which, we understand, is meant a deed with covenant of warranty. This contract appellee has failed to perform to the extent of 313.3 acres. Appellant would hence be entitled to a credit for this number of acres at $4.50 per acre, but we find that, in his pleadings, he alleges that there are actually 2,121 acres in the tract in question. It follows that, as he has averred a deficiency of only 299.40 acres, his relief will have to be limited to that number at $4.50 per acre. He is therefore entitled to a credit, in excess of what the court below awarded him, of 146.9 acres, at $4.50 per acre, or $661.05. We consequently recommend that the judgment of the court below be reversed, and that it be here reformed and rendered, so that the appellee shall recover from the appellant the sum of $833.81, with interest at 8 per cent. from the date of the judgment below; that appellant pay all costs incurred below; and that appellee pay all costs incurred in this court.

FISHER, J., being disqualified, did not sit in this case.

STAYTON, C. J. Reversed and rendered as per opinion of the commission of appeals.

GUNTER v. TEXAS LAND & MORTG. CO., Limited.

(*Supreme Court of Texas.* Dec. 11, 1891.)

CONSTITUTIONAL LAW—SUBJECT OF ACT—EXPRESSION IN TITLE.

Under Const. art. 3, § 35, providing that no bill shall contain more than one subject, "which shall be expressed in its title," Act April 13, 1891, (Laws 1891, p. 82,) entitled "An act to amend title three, articles 9 and 10, and to add article 10*a*, * * * and to repeal all laws in conflict therewith," is void, by reason of its subject not being expressed in its title, though Rev. St. Tex. is the only one of the Texas laws which has a title 3, and though by inspection it appears that articles 9 and 10 thereof relate to the same subject treated by the act in question.

Appeal from district court, Ellis county; ANSON RAINEY, Judge. Affirmed.

Action by the Texas Land & Mortgage Company, Limited, against Jot Gunter for foreclosure of a mortgage. Judgment for plaintiff, and defendant appeals.

Linus M. Dabney, for appellant. *Robertson & Coke*, for appellee.

STAYTON, C. J. This is an agreed case, and so much as is necessary to be stated is as follows: "Appellee brought this suit in the district court of Ellis county, and its petition alleged the following facts: That plaintiff is a foreign corporation, incorporated under the laws of the kingdom of Great Britain and Ireland, with its principal office in the city of London, England, but doing business in the state of Texas, and having an office in Dallas county, in said state; that the business

authorized by plaintiff's articles of incorporation, and the business done by plaintiff, is the loaning of money, and taking as security for its payment, mortgages, and trust-deeds upon real estate; that on August 13, 1889, plaintiff filed its said articles of incorporation with the secretary of state of the state of Texas, and paid the said secretary of state, as consideration for the right to carry on its said business in the state of Texas for the period of ten years from the date above named, the sum of two hundred dollars; that the contract so made with the state is evidenced by the following certificate, to-wit: 'No. 66. The State of Texas, Department of State. This is to certify that the Texas Land & Mortgage Company, Limited, incorporated under the laws of England, for the purpose of loaning money, taking mortgages and liens to secure the payment thereof, and any other business incidental or necessary thereto, with authorized capital stock of $2,500,000, has this day filed in this department a certified copy of its articles of incorporation, in accordance with the requirements of an act of the twenty-first legislature of the state of Texas, approved April 3d, 1889; and I further certify that said corporation has this day paid $200.00, the amount of fee prescribed by said act; and I hereby declare that said corporation, having fully complied with the law, is entitled to and is hereby granted permission to carry on its business in this state, in accordance with the provisions of said act of April 3d, 1889, for the period of ten years from the date hereof, in accordance with the purpose herein specified. Witness my official signature and the seal of state affixed, at the city of Austin, the 13th day of August, 1889. [L. S.] [Signed] J. M. MOORE, Secretary of State.' That on July 30, 1891, the plaintiff loaned the defendant the sum of $550, in consideration of which the defendant then and there made his note of that date for said amount, payable to the order of plaintiff 15 days after the date thereof, with 10 per cent. per annum from date, and 10 per cent. attorney's fees in addition in case of suit upon said note, and delivered said note to plaintiff, and, on the same date, for value, executed and delivered to plaintiff a trust-deed conveying to Henry C. Coke, a citizen of Texas, as trustee, the following property, to-wit: Those certain lots or tracts of land described as follows, to-wit: Lying and being situated in the city of Dallas, Dallas county, Texas, and known as lots No. 7 and 8, in block R, of Simpson & Clark's addition to the city of Dallas, known also as block No. 584 of Murphy & Bolanz's official map of Dallas, to secure the prompt payment of aforesaid note. Said trust-deed was in form a conveyance of aforesaid property to said trustee, with covenants of general warranty, and contained the usual stipulations and power of sale upon default of payment of the debt secured, and the conditions and clauses of defeasance usual and common in such instruments; that, when said debt became due, the defendant failed and refused to pay the same, or any part thereof, but wholly made default; and that said debt remained wholly unpaid at the institution of said suit, and still is wholly unpaid. Plaintiff asks for judgment against said defendant for its said debt, interest, attorney's fees, and costs, and for foreclosure of the lien of said trust-deed on the above-described premises. The defendant appeared, and, answering said petition, admitted the truth of the facts pleaded, but excepted specially to said petition, as follows: (1) To so much of said petition as set up aforesaid permit as a contract between the state and plaintiff, because said permit was not a contract, but a revocable license, which conferred no right on plaintiff that the state could not take away by statute. (2) To so much of said petition as sought a foreclosure of the lien of aforesaid trust-deed on the premises above described, because said deed having been made to secure the payment of money to a foreign corporation on land in Texas, under the act of the legislature of Texas approved April 13, 1891, created no lien and was void. The case was properly and regularly reached and called for trial, and was submitted to the court; whereupon the court overruled above exceptions, and rendered judgment for plaintiff for six hundred and sixteen dollars, the amount due on said note of said date, with foreclosure of the lien of said trust-deed on aforesaid premises; to which ruling of the court defendant duly excepted, and in open court gave notice of appeal. No questions are involved in the appeal except the following: (1) Is the permit above set out a contract between plaintiff and the state, the obligation of which the state cannot impair by subsequent legislation? (2) Does the act of the legislature of April 13, 1891, prohibiting alien ownership of lands in Texas, affect the validity of aforesaid trust-deed, and is the said judgment of foreclosure entered in this case erroneous by reason of anything in said act contained? And, should it be held by the supreme court that said act of April 13, 1891, affected the validity of aforesaid trust-deed, and made it erroneous for the court to enter judgment foreclosing the lien of said deed, and the aforesaid permit from the state to plaintiff was not a contract, the obligation of which was impaired by said act of the legislature, then it is agreed that the judgment in this case shall be reformed by the supreme court so as to stand simply as a judgment for money; otherwise it shall be affirmed."

If the act of April 13, 1891, be invalid, it is unnecessary to consider whether the permit to appellee to do business in this state was revocable, as is it to determine whether, within the meaning of that act, a mortgage deed conveys title or interest in land. It is claimed on one side, and denied by the other, that the act is void. The constitution provides that no bill (except appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. Const. art. 3, § 35. The only exception to this rule thus declared is found in article 3, § 43, of the constitution, which declares that "the first session of the leg-

islature under this constitution shall provide for revising, digesting, and publishing the laws, civil and criminal; and a like revision, digest, and publication may be made every two years thereafter: provided that, in the adoption of and giving effect to any such digest or revision, the legislature shall not be limited by sections 35 and 36 of this article." In pursuance of this article, the sixteenth legislature, at its regular session, passed an act entitled "An act to adopt and establish the 'Revised Civil Statutes of the State of Texas;'" and the first section of that act was as follows: "Section 1. Be it enacted by the legislature of the state of Texas that the following titles, chapters, and articles shall hereafter constitute the Revised Statutes of the State of Texas." This revision contains many "titles," most of which contain more that one "chapter" and many articles. At the same session of the legislature a like revision was made of the Penal Code and Code of Criminal Procedure. The original Penal Code was enacted on August 28, 1856, under a title as follows: "An act to adopt and establish a Penal Code for the state of Texas;" and the Code of Criminal Procedure, by an act entitled "An act to establish a Code of Criminal Procedure for the state of Texas;" and it was declared that the one should be known as the "Penal Code," and the other as the "Code of Criminal Procedure." Section 2 of final title of Revised Statutes provides "that these Revised Civil Statutes of the State of Texas shall be known and may be cited as the 'Revised Statutes.'" The title of the act to be considered in this case is as follows: "An act to amend title three, articles 9 and 10, and to add articles 10*a*, 10*b*, 10*c*, 10*d*, 10*e*, 10*f*, 10*g*, and 10*h*, and to repeal all laws in conflict therewith." Laws 1891, p. 82. If this title be not in compliance with article 3, § 35, of the constitution, then the act following it is void.

It is contended that the title is a compliance with the requirements of the constitution, notwithstanding that from it the subject of legislation cannot be known; and so upon the theory that, by searching the Revised Statutes, it will be seen that title 3 of the Revised Statutes is the only one of that number in any of the laws of this state which has articles numbered 9 and 10; and, further, because, looking to title 3, arts. 9, 10, Rev. St., it will be seen that these relate to the same subject on which the act in question was intended to operate. The mischiefs intended to be avoided by section 35, art. 3, of the constitution, have been so often stated that it is not now necessary to restate them, and it must be deemed settled that such a law is mandatory, and hence binding upon every department of the government. While this is so, such provisions have been liberally construed, and it has been steadily held that a title which, in substance, is a compliance with the requirement of the constitution is sufficient. But can it be claimed that the title in question is sufficient, even under this liberal rule? The constitution declares that the "subject shall be expressed in the title," and it cannot be said that this has been done when the title does no more than to furnish a reference to some other writing, document, or law from which, by search, the true purpose of a title may be ascertained. If such had been the intention of the people when they adopted the constitution, or of the delegates who framed it, the peremptory language found in the section of the constitution under consideration would not have been used. The body of a bill would furnish more ready means of information to members of the legislature as to its subject than would a mere reference in a title to some other law which it was the purpose of a bill to amend; but no one would contend that a title as follows: "An act to amend an act in reference to the subject contained in the bill to which this is the title,"—would be a compliance with the constitution. In states having such a constitutional requirement as that found in the constitution of this state, it has been held that the title to an amendatory law having application to a specific subject, and not to a body of laws enacted by one act, must embrace the title of the act to be amended in order to give the subject of the law, unless the title of the amendatory act does this in some other manner. No one would contend that a title as follows: "An act in reference to the subject embraced in the bill to which this is the title,"—would be sufficient, although such a title attached to a bill would give most easy reference to the source of information from which the subject of the contemplated law might be ascertained. This is so because the constitution requires the subject of an act to be given in the title to it, and a mere reference to something else for the information thus required to be given is not sufficient.

Since the enactment of the Penal Code and Code of Criminal Procedure the legislature has amended them by acts, the titles of which gave the number of the article to be amended, and name of the Code as given by the act adopting it; and the same course has been pursued in reference to the Revised Statues; and in view of the legislative construction thus placed upon the section of the constitution under consideration, as well as some decisions by this and other courts based on like provisions, we would not feel authorized to hold that such a construction was so clearly wrong as to justify this court in holding statutes with such titles invalid, although it might seem to us that a different rule would be more in harmony with the requirements of the constitution. The views on which the legislature and courts have proceeded doubtless is that the Penal Code, Code of Criminal Procedure, and Revised Civil Statutes each relate to but one subject, the first two defining crime and prescribing punishment therefor, both germane to one subject,—crime; the next to provide rules of procedure through which crime may be established and proper punishment imposed, the subject being the mode in which this may be done. In reference to the same matter, the legislatures of this and other states and some courts have doubtless regarded such a collection of statutory laws as are found in the Revised Statutes of this state, adopted, as

were they, by one act, as relating to but one general subject; and for this reason, in amending such a statute, it has been thought sufficient for the amendatory statute in its title to name the section or article and body of laws which it is found that it is the intention of the legislature to amend. Whether such views are correct or not, it might be well for the legislature to consider, in view of the fact that section 43, art. 3, of the constitution, in terms applies only to revisions of the body of laws, civil and criminal, periodically, and not to amendments made thereto between the periods of revision.

Under the liberal rule above suggested, it cannot, however, with reason be contended that the title of the act under consideration is a substantial compliance with the requirements of the constitution; for the title does not name the body of laws by its title or otherwise which it was the purpose of the legislature to amend, nor does it otherwise designate the subject in reference to which it was intended to legislate. If we look to title 3, arts. 9, 10, Rev. St., we may ascertain that those regulate or determine to some extent the rights of aliens; and if we look to the act in question we see that it has application, in part at least, to the same subject; but it is not in this manner that the constitution requires notice or information of the subject of a proposed act to be given. In State v. McCracken, 42 Tex. 384, the validity of an act was called in question, the title to which was as follows: "An act to amend an act entitled 'An act to adopt and establish a Penal Code for the state of Texas,' approved Aug 26, A. D. 1871;" and the title was held sufficient. The ground of objection to it was that it did not give the true date of the adoption of the Penal Code, and it was held that this did not invalidate the act, because only one Penal Code had ever been in force in this state, and that for this reason the title was not misleading. It is claimed that in the case of State v. Ranson, 73 Mo. 78, the supreme court of Missouri held a title to an act, in all material respects like that under consideration in this case, sufficient, but we do not think this is true. The title of the act considered in that case was as follows: "An act to revise and amend chapters 176 to 186, inclusive, regulating the jurisdiction and procedure before justices of the peace in civil cases." In that title certain chapters were referred to, as are articles in the title in question, without statement of the particular act of which they were parts; but had the title in that act gone no further than does the title before us, we apprehend that the supreme court of Missouri would have decided differently. The title of that act, besides naming the chapters to be amended, expressly gave the subject of the act to which the amendment was to relate, which was "the jurisdiction and procedure before justices of the peace in civil cases;" and the court doubtless considered this a sufficient designation of the chapters to be amended, and deemed the part of the act then under consideration germane to the subject named. There is nothing in the title of the act under consideration from which the subject may be known, and, were we to hold it a compliance with the requirement of the constitution, we would deny to that clause the effect which its letter and spirit show it was intended to have. We think the court below correctly held the act in question inoperative for the reasons indicated, and its judgment will be affirmed.

STATE *et al.* v. MALLINSON.

(*Supreme Court of Texas.* Dec. 11, 1891.)

Appeal from district court, McLennon county; L. W. GOODRICH, Judge.

Action by the state against Theodore Mallinson to declare certain land conveyed to defendant, an alien, by one Jones, escheated to plaintiff. S. W. Slayden, claiming under a subsequent conveyance from Jones, intervened. Judgment was rendered for defendant, and plaintiff and the intervener appeal. Affirmed.

M. C. H. Park, for appellants. *Williams & Evans*, for appellee.

STAYTON, C. J. This is an agreed case, involving the same question considered in the case of Gunter v. Mortgage Co., 17 S. W. Rep. 840, (this day decided,) which arises on the following facts: "It is agreed that Theo. Mallinson, appellee, purchased the land in controversy herein from one Travis Jones, by deed dated September 3, 1891, and that at said date, and now, the said Mallinson is an adult alien, a subject of the kingdom of Great Britain and Ireland, and that he has never declared his intention of becoming a citizen of the United States of America, or of the state of Texas." It is further agreed that said land was afterwards conveyed by said Travis Jones to intervener, S. W. Slayden. The state of Texas, the plaintiff below, appellant here, contends that, by act of the legislature approved April 13, 1891, to amend title 3, arts. 9, 10, (see page 82 of Laws of Texas, passed by the twenty-second legislature,) said land should be escheated to the state of Texas. Intervener contends that said deed from Jones to Mallinson is void by the terms of said law; that the same did not divest the title out of Jones; and that the deed from Jones to intervener conveyed the title. The action was brought by the state to have title to the land declared and vested in it, and Slayden intervened, asserting title in himself; but the court below held the act on which the proceeding is based to be void, and rendered judgment in favor of Mallinson, and from that judgment this appeal is prosecuted. We deem it unnecessary to discuss the many questions presented by the agreed case, for the objection to the law under which the state and intervener claim, considered in the case before referred to, is fatal to the claims of both, and the judgment of the court below will be affirmed.

RALSTON *et al.* v. SKERRETT *et al.*

(*Supreme Court of Texas.* Dec. 11, 1891.)

SOLDIERS' LAND BOUNTIES—CONFIRMATION OF CERTIFICATE.

S., a soldier in the Texas revolution, and as such entitled to a headright of a third of a league of land under Act Dec. 14, 1837, received a certificate in 1841, and in 1849 conveyed the certificate and the land on which it had been located by deed with covenants of warranty against himself and his heirs. The certificate for the headright, which had never been established by suit, was invalid. Act April 26, 1873, directing, for the relief of S., that another certificate be issued to him in lieu of the original, was in conflict with Const. 1866, art. 10, § 6, prohibiting a grant of land to any one by the legislature. *Held*, that under Gen. Laws 1883, p. 38, declaring that all surveys and patents by virtue of