

imburse all sums of money recovered of the sheriff by such party on account of such escape.

SEC. 6. All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment in the district court of the county against which the action is brought.

Actions against.

SEC. 7. Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant in such action resides. When any action shall be commenced against any county, a copy of the summons shall be left with the clerk of the board of the county commissioners, either during their session, or so that a term of said session shall intervene between the day of leaving a copy of such summons and the return day thereof. There shall always be ten days between the service and return of every such summons, in all actions brought by or against every county. The inhabitants of the county so suing or being sued, may be jurors or witnesses, if otherwise competent or qualified according to law.

Actions where brought.

Summons, how served.

CHAP. LVI.—An Act to provide for the punishment of offences against the public health.

SEC. 1. That if any person shall knowingly sell any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding one hundred dollars.

Penalty for selling unwholesome provisions, etc.

SEC. 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquor or other liquor intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars, and the articles so adulterated shall be forfeited and destroyed.

For adulterating liquors, etc.

SEC. 3. If any person shall fraudulently adulterate for the purpose of sale, any drug or medicine in such a manner as to render the same injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

Ib. drugs, etc.

SEC. 4. If any person shall inoculate himself or any other person, or shall suffer himself to be inoculated with the small pox, within this territory, with intent to cause the prevalence or spread of this infectious disease, he shall be punished by imprisonment in the state prison not more than three years nor less than one year.

For inoculating with small pox, etc.

CHAP. LVII.—An Act concerning the writ of Habeas Corpus.

SEC. 1. Every person imprisoned or otherwise restrained of his liberty, except in the cases in the following section specified may prosecute a writ of habeas corpus, according to the provisions of this act, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

Persons imprisoned to have writ of habeas corpus.

Who not entitled to writ.

SEC. 2. The following persons shall not be entitled to prosecute such writ: Persons committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of any execution issued upon such judgment or decree; but no order of commitment for any alleged contempt, or upon proceedings as for contempt, to enforce the rights or remedies of any party, shall be deemed a judgment or decree within the meaning of this section, nor shall any attachment or other process issued upon any such order be deemed an execution within the meaning of this section.

Application how, by whom and to whom made.

SEC. 3. Application for such writ shall be made by petition signed either by the party for whose relief it is intended, or by some person in his behalf, as follows: To any judge of the supreme or district courts, or any supreme court commissioner, being within the county where the prisoner is detained, or if there be no such officer within such county, or if he be absent, or for any cause be incapable of acting, or have refused to grant such writ, then to some officer having such authority residing in any adjoining county.

Applicant when to make oath, etc.

SEC. 4. Whenever application for any such writ shall be made to any officer not residing within the county where the prisoner shall be detained, he shall require proof by the oath of the party applying, or by other sufficient evidence, that there is no such officer in such county authorized to grant the writ, or if there be one, that he is absent or has refused to grant such writ, or for some cause to be specially set forth is incapable of acting, and if such proof be not produced the application shall be denied.

What petition for writ must state

SEC. 5. The petition must state in substance,

1st. That the person in whose behalf the writ is applied for is imprisoned or restrained in his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming both parties if their names are known, or describing them if they are not.

2d. That such person is not committed or detained by virtue of any process, judgment, decree or execution specified in the second section of this act.

3d. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the party.

4th. If the confinement or restraint is by virtue of any warrant, order or process, a copy thereof must be annexed, or it must be averred that by reason of such prisoner's being removed or concealed before the application, a demand of such copy could not be made, or that such demand was made and the legal fees therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused.

5th. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists.

6th. It must be verified by the oath of the party making the application.

Writ to be granted without delay.

SEC. 6. Any officer empowered to grant any writ applied for under this act, to whom such petition shall be presented, shall grant such writ without delay, unless it shall appear from the petition itself, or from the documents annexed, that the party applying therefor, is by the provisions of this act prohibited from prosecuting such writ.

Form of writ.

SEC. 7. Every writ of habeas corpus issued under the provisions of this act, shall be substantially in the following form:

"The United States to the sheriff of, &c. (or to A. B.)

"You are hereby commanded to have the body of C. D. by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged, before E. F. judge of the district court (or supreme court commissioner as the case may be) at, &c. on, &c. (or immediately after the receipt of this writ) to do and receive what shall then and there be considered concerning the said C. D. And have you then and there this writ.

Witness, &c."

SEC. 8. Such writ of habeas corpus shall not be disobeyed for any defect of form. It shall be sufficient,

Writ not to be disobeyed for any defect of form.

1st. If the person having the custody of the prisoner be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation; and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person.

2d. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described in any other way so as to designate the person intended.

SEC. 9. If any officer authorized by the provisions of this act to grant writs of habeas corpus shall wilfully refuse to grant such writ when legally applied for, he shall forfeit for every such offence, to the party aggrieved, one thousand dollars.

Penalty for refusing writ.

SEC. 10. The person upon whom any such writ shall have been duly served, shall state in his return, plainly and unequivocally,

What person on whom writ is served to state in return.

1st. Whether he have or have not the party in his custody or under his power or restraint.

2d. If he have the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large.

3d. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced, and exhibited on the return of the writ, to the officer before whom the same is returnable.

4th. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority, such transfer took place.

The return must be signed by the person making the same and except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by his oath.

SEC. 11. The person or officer on whom the habeas corpus shall have been served, shall also bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

Officer to bring body in certain cases.

SEC. 12. If the person upon whom such writ shall have been duly served, shall refuse or neglect to obey the same by producing the party named in such writ, and making a full and explicit return to every such writ within the time required by the provisions of this act, and no sufficient excuse shall be shown for such

Person refusing to obey writ, to be imprisoned.

refusal or neglect, it shall be the duty of the officer before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county in this territory, and commanding him forthwith to apprehend such person, and to bring him immediately before such officer; and on such person being so brought, he shall be committed to close custody in the jail of the county in which such officer shall be, without being allowed the liberties thereof, until he shall make return to such writ, and comply with any order that may be made by such officer in relation to the person for whose relief such writ shall have been issued.

Attachment,
when directed to
coroner.

SEC. 13. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person to be designated therein, who shall have full power to execute the same, and such sheriff upon being brought up, may be committed to the jail of any county other than his own.

Officer to have
person brought be-
fore him.

SEC. 14. The officer by whom any such attachment may be issued, may also at the same time or afterwards, issue a precept to the same sheriff or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such officer, the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person, until he shall be discharged, bailed or remanded, as such officer shall direct.

Sheriff to have
power of county.

SEC. 15. In the execution of such attachment or precept or of either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county, as in other cases.

Cause of con-
finement inquired
into.

SEC. 16. The officer before whom the party shall be brought on such writ, shall immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not.

When party act
at liberty.

SEC. 17. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such officer shall discharge such party from the custody or restraint under which he is held.

In what cases
party remanded.

SEC. 18. It shall be the duty of the officer forthwith to remand such party, if it shall appear that he is detained in custody, either,

1st. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or

2d. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or

3d. For any contempt specially and plainly charged in the commitment, by some court, officer or body, having authority to commit for the contempt so charged; and

4th. That the time during which such party may be legally detained has not expired.

In what cases
prisoner discharg-
ed.

SEC. 19. If it appear on the return that the prisoner is in custody by virtue of civil process of any court legally constituted, or issued by any officer in the course of judicial proceedings before him authorized by law, such prisoner can only be discharged in one of the following cases:

1st. Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person.

2d. Where, though the original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to be discharged.

3d. Where the process is defective in some matter of substance required by law, rendering such process void.

4th. Where the process, though in proper form, has been issued in a case not allowed by law.

5th. Where the person having the custody of the prisoner under such process, is not the person empowered by law to detain him; or

6th. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

SEC. 20. But no officer on the return of any habeas corpus issued under this act, shall have power to inquire into the legality or justice of any judgment, decree or execution specified in the preceding second section.

No inquiry as to legality of decree.

SEC. 21. If it appear that the party has been legally committed for any criminal offence, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be guilty of such an offence, although the commitment be irregular, the officer before whom such party shall be brought, shall proceed to let such party to bail, if the case be bailable and good bail be offered, or if not, shall forthwith remand such party.

Party when to be bailed.

SEC. 22. If the party be not entitled to his discharge and be not bailed, the officer shall remand him to the custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto; if not so entitled he shall be committed by such officer to the custody of such officer or person as by law is entitled thereto.

When party placed in custody.

SEC. 23. Until judgment be given upon the return, the officer before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such officer shall be, or place him in such care or under such custody as his age and other circumstances may require.

In custody of sheriff till judgment given.

SEC. 24. When it appears from the return to any such writ, that the party named therein is in custody on any process under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney, if he have one, if to be found within the county shall have had sufficient notice of the time and place at which such writ shall have been made returnable.

Person interested to have notice.

SEC. 25. When it shall appear from the return that such party is detained upon any criminal accusation, such officer shall make no order for the discharge of such party, until sufficient notice of the time and place at which such writ shall have been returned, or shall be made returnable, shall be given to the district attorney of the county in which such officer shall be, if to be found within the county.

District attorney to be notified.

SEC. 26. The party brought before any such officer on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to

Party may deny facts set forth in return.

Penalty for refusing copy of warrant.

of any order, warrant, process or other authority by which he shall detain any person, to any one who shall demand such copy, and tender the fees thereof, shall forfeit two hundred dollars to the person so detained.

Writ made returnable.

SEC. 41. Every writ of habeas corpus may be made returnable at a day certain or forthwith, as the case may require.

How endorsed.

SEC. 42. Every such writ shall be endorsed with a certificate that the same has been allowed, and with the date of such allowance, which endorsement shall be signed by the officer allowing the writ.

Writ by whom and how served, in certain cases.

SEC. 43. Writs of habeas corpus can only be served by an elector of some county within this Territory; and the service thereof shall not be deemed complete, unless the party serving the same shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coronor, constable or marshal, the fees allowed by law for bringing up such prisoner; nor unless he shall also give bond to such sheriff, coronor, constable or marshal, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific sum of money, and if not, then in the penalty of one thousand dollars, conditioned that such person will pay the charges of carrying back such prisoner, if he shall be remanded, and that such prisoner will not escape by the way, either going to or returning from the place to which he is to be taken.

How served.

SEC. 44. Every writ of habeas corpus, issued pursuant to this act, may be served by delivering the same to the person to whom it is directed; if he cannot be found, it may be served by being left at the jail, or other place in which the prisoner may be confined, with any under officer or other person of proper age, having charge for the time of such prisoner.

1b. when person conceals himself.

SEC. 45. If the person on whom the writ ought to be served conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling-house or of the place where the party is confined.

Sheriff, &c., to obey writ.

SEC. 46. It shall be the duty of every sheriff, coronor, constable or marshal, upon whom a writ of habeas corpus shall be served, whether such writ be directed to him or not, upon payment or tender of the charges allowed by law, and the delivery or tender of the bond herein prescribed, to obey and return such writ, according to the exigency thereof; and it shall be the duty of every other person, upon whom such writ shall be served, having the custody of the individual for whose benefit the writ shall be issued, to obey and execute such writ according to the command thereof, without requiring any bond or the payment of any charges, unless the payment of such charges shall have been required by the officer issuing such writ.

Petitioner when to pay charges of bringing up prisoner.

SEC. 47. Every officer allowing a writ of habeas corpus, directed to any other than a sheriff, coronor, constable or marshal, may, in his discretion, require as a duty to be performed, in order to render the service thereof effectual, that the charges of bringing up such prisoner shall be paid by the petitioner; and in such case he shall, in the allowance of the writ, specify the amount of such charges, so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

SEC. 48. If the writ be returnable at a certain day, such return

shall be made, and such prisoner shall be produced, at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

When prisoner to be produced.

SEC. 49. The provisions of the common law, in regard to the writ of habeas corpus, treated of in this act, are hereby abrogated, except so much and such parts thereof as may be necessary to carry into full effect the provisions herein contained; and the authority of courts and officers to award such writ, or to proceed thereon by the common law, shall be exercised in conformity to the provisions of this act, in all cases therein provided for.

Provisions of common law abrogated.

SEC. 50. Nothing contained in this act shall be construed to restrain the power of any court to issue a writ of habeas corpus, when necessary to bring before them any prisoner for trial, in any criminal case lawfully pending in the same court; or to bring in any prisoner to be examined as a witness, in any suit or proceeding, civil or criminal, pending in such court, when they shall think the personal attendance and examination of the witness necessary for the attainment of justice.

Act not to restrain courts issuing writs.

CHAP. LVIII.—An Act to regulate Weights and Measures.

SEC. 1. That there shall be but one standard of measure of length and surface, one of weight and one measure of capacity, in this Territory.

But one standard measure.

SEC. 2. That the unit or standard measure of length and surface, from whence all other measures of extension, whether they be lineal, superficial or solid, shall be derived and ascertained, shall be the yard as now in legal use in the State of New York.

Standard of length to be yard.

SEC. 3. That the yard shall be divided into three equal parts, called feet, and each foot into twelve equal parts, called inches, and for measure of cloths and other commodities, commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths.

Yard, how divided.

SEC. 4. That the rod, pole or perch, shall contain five such yards and a half; the furlong two hundred and twenty such yards; and the mile one thousand seven hundred and sixty such yards.

Rod, &c., length of.

SEC. 5. That the acre, for land measure, shall be measured horizontally, and shall be equal to a rectangle sixteen such rods, poles or perches in length and ten in breadth, and shall contain one hundred and sixty square rods, poles or perches, or four thousand eight hundred and forty square yards; six hundred and forty such acres being contained in a square mile.

Acre, how measured, &c.

SEC. 6. That the unit or standard of weight, from which all other weights shall be derived and ascertained, shall be the pound as the same is now in legal use in the State of New York; and the said pound shall be divided into sixteen equal parts, called ounces.

Standard of weight to be the pound.

SEC. 7. That the unit or standard of measures of capacity, as well for liquids as for any dry commodities not measured by heaped measure, from which all other measures of capacity shall be derived and ascertained, shall be the gallon.

Of capacity to be gallon.