ACT OF

INCORPORATION,

STATUTES AND DECISIONS

RELATIVE TO THE

HOUSE OF REFUGE

IN THE

CITY OF NEW YORK.

NEW YORK:
PRESS OF WYNKOOP & HALLENBECK,
No. 113 Fulton Street.
1874.

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may have a common seal, and change the same at their pleasure, and shall be capable in law by that name and style of purchasing, holding and conveying any estate, real or personal, for the use of said corporation. *Provided*, that such real estate shall never exceed the yearly value of ten thou-

[redacted]

WHEREAS, by the petition of several inhabitants of the city of New York, it is represented that they are desirous of establishing a Society and House of Refuge for the Reformation of Juvenile Delinquents, in the said city, and have prayed to be incorporated: Therefore,

I. *Be it enacted by the people of the State of New York, represented in Senate and Assembly*, That all such persons as now are or hereafter shall become subscribers to the said association pursuant to the by-laws thereof, shall be, and hereby are constituted a body corporate and politic, by the name of "THE MANAGERS OF THE SOCIETY FOR THE REFORMATION OF JUVENILE DELINQUENTS IN THE CITY OF NEW YORK," and by that name they shall have perpetual succession, and be in law capable of suing and being sued, defending and being defended, in all courts and places, and in all manner of actions and causes whatsoever, and

shall not take place on the stated day for that purpose, the said corporation shall not thereby be dissolved, but the members of said Board shall continue in office until a new election, which shall be had at such time and place and after such notice as the said Board shall prescribe, and in case of an equality of votes for any one or more persons as a member or members of the said Board of Managers, the said board shall determine which of such persons shall be considered as elected, and such person or persons shall take his or their seats and act accordingly.

[redacted]

the election on the third Monday in November in the year one thousand eight hundred and twenty-five, the following persons shall compose the said Board of Managers, to wit: Cadwallader D. Colden, John Griscom, John Duer, Jonathan M. Wainwright, Isaac Collins, Thomas Eddy, Ansel W. Ives, John T. Irving, John E. Hyde, Cornelius Du Bois, James W. Gerard, Joseph Curtis, John Stearns, Ralph Olmstead, Robert F. Mott, Stephen Allen, Henry I. Wykoff, Samuel Cowdrey, John Targee, Arthur Burtis, Joseph Grinnell, Hugh Maxwell, Henry Mead, Peter A. Jay, Gilbert Coutant, Cornelius R. Duffie, and James Lovett. *And it is hereby further enacted*, that no Manager of the said Society shall receive any compensation for his services.

III. *And be it further enacted*, That if the annual election

* Amended 22d March, 1865, by dividing into three classes.

V. *And be it further enacted*, That all and singular the clauses and provisions in the act entitled "An Act concerning apprentices and servants," relating to the covenants to be inserted in the indentures of apprentices and servants, made by the Overseers of the Poor, and the provisions of the sixth, ninth, tenth, eleventh, twelfth and thirteenth sections of the last-mentioned act, shall apply to the apprentices and servants, and the persons to whom they may be bound, under and by virtue of this act.

1825.—CHAPTER 107.

AN ACT *in aid of the Managers of the Society for the Reformation of Juvenile Delinquents in the City of New York.*

Passed April 9, 1825.

Be it enacted by the people of the State of New York represented in Senate and Assembly, That the Treasurer shall, on the warrant of the Comptroller, pay to the Treasurer or Managers of the Society for the Reformation of Juvenile Delinquents in the City of New York, out of any money in the Treasury not otherwise appropriated, the sum of two thousand dollars annually, for the term of five years; that the first payment of two thousand dollars shall be made on the first day of May next, and the like sum on every first day of May thereafter.

Reformation of Juvenile Delinquents in the City of New York," passed March 29, 1824, in respect to children which the said Managers have received or may receive in virtue of that act.

§ 2. *And be it further enacted*, That the Commissioners mentioned in the thirty-eighth section of the act entitled "An Act to provide against Infectious and Pestilential Diseases," passed March 21, 1823, shall account annually to the Comptroller of the State, for all moneys received by them for the use of the Marine Hospital; and if the same shall in any one year, be more than sufficient to defray the expense of executing the trust committed to them, exclusive of such expenses as are to be borne and paid as part of the contingent charges of the city of New York, and including the annual compensations granted to the said Commissioners by the said act, then, and in such case, the said Health Commissioners shall pay such

eral counties of this State shall be allowed for the transportation of any juvenile delinquent, according to the provisions of this act, the same compensation as is now given by law for the transportation of convicts to the State Prisons, to be audited and paid by the supervisors of the respective counties, as part of the contingent expenses of the said counties: *Provided*, That after notice shall be given by the Managers of the said Society, that there is not room for the reception of any further delinquents, it shall not be lawful to transport any other delinquents, until notice shall be given that they can be received.

§ 4. *And be it further enacted*, That the Legislature may at any time repeal, amend, or modify this act.

1829.—CHAPTER 302.

AN ACT *to create a fund in aid of the Society for the Reformation of Juvenile Delinquents in the City of New York, and for other purposes.*

Passed April 29, 1829.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Commissioners of Health mentioned in the eleventh and twelfth sections of title fourth of chapter fourteenth of the first part of the Revised Statutes, shall pay out of the moneys received by them for the use of the Marine Hospital, eight thousand dollars annually, in quarterly payments of two thousand dollars each, commencing on the first day of May next, to the Treasurer of the Society for the Reformation of Juvenile Delinquents in the City of New York, for the use of said Society, which sum of eight thousand dollars shall be part of the surplus, and not in addition thereto, directed to be paid said Treasurer by the

above-mentioned eleventh section, and the said Commissioners of Health shall pay over annually to the Comptroller of the State, on or before the first of April, the balance that may remain of the said surplus fund, after paying the eight thousand dollars as aforesaid; and the balance of the said surplus so paid to the Comptroller, shall be invested by him in some secure manner at interest, and the said fund shall be kept distinct and separate, and shall be denominated the Mariner's Fund.

§ 2. So much of the said twelfth section of title fourth of chapter fourteenth of the first part of the Revised Statutes, as applies to the balance of hospital moneys in the hands of the Commissioners of Health, is declared to apply only to such balances as were in their hands at the time said chapter took effect as a law; and any part of said section inconsistent with this declared construction, is hereby repealed.

§ 3. The Commissioners for collecting the duty of excise in the city of New York, designated by the act entitled "An Act to lay a duty on Strong Liquors, and for regulating Inns and Taverns, so far as relates to the city of New York, and for other purposes," passed April 10, 1824, shall demand and receive one dollar and fifty cents, in addition to the sum now required by law, upon every license granted by them after the passing of this act to any tavern-keeper, grocer or keeper of an ordinary or victualling-house or public garden, in pursuance of the act above mentioned, and the acts amendatory of the same, which additional sums the said Commissioners shall pay over to the Treasurer of the Society for the Reformation of Juvenile Delinquents in the City of New York, for the use of said Society.

[§ 3 repealed by Act of April 21, 1831.]

§ 4. No theatre or circus, or building for exhibiting theatrical or equestrian performances in the City of New York, shall be opened for such exhibitions after the first day of

May next, unless the manager or proprietor thereof, shall annually obtain from the Mayor of the said city a license therefor, which license the said Mayor is authorized to grant, to continue until the first day of May ensuing the grant thereof; and every manager or proprietor offending in the premises, or consenting or allowing the same to be done, whether there be one or more managers or proprietors of such theatre or circus, shall be guilty of a misdemeanor, and shall be subject to a fine of one hundred dollars for each day it shall be so opened, or imprisonment not exceeding three months.

[§ 4 repealed by Act of February 1, 1839.]

§ 5. Upon granting every license authorized by the preceding section, the Mayor shall receive from the person to whom the same shall be granted, the sum of five hundred dollars for each theatre, and the sum of two hundred and fifty dollars for each circus, which sums, when so received shall be paid over to the Treasurer of the Society for the Reformation of Juvenile Delinquents in the City of New York, for the use of said Society.

[§ 5 repealed by Act of February 1, 1839.]

§ 6. The said Commissioners of Health shall render to the Comptroller annually, a minute and detailed account of all moneys denominated "Hospital Moneys" which shall be received, and also of all such moneys disbursed by them or either of them, for the Marine Hospital, for the expenses of their trust so far as the same are payable out of this fund, for their own salaries, and the commission allowed by law to the Health Commissioners for collection, and also of the surplus, if any, of such moneys paid over to the Treasurer of the Society for the Reformation of Juvenile Delinquents in the City of New York.

§ 7. The Comptroller is hereby authorized to allow to the Health Commissioners for the collection of "Hospital

money," from coasting vessels, a commission at his discretion, of not less than two and a half, nor exceeding ten per cent., which allowance he is authorized to make, as well upon the collections made from such vessels during the past year, as upon those hereafter to be made.

1830.—CHAPTER 181.

PART OF "AN ACT *concerning Convicts under the age of seventeen years, and for other purposes.*"

Passed April 16, 1830.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The person administering the government of this State is hereby empowered to direct the agent of either of the State Prisons of this State, whenever the inspectors thereof shall recommend the same, to convey any convicts who shall be under the age of seventeen years, to the House of Refuge in the city of New York; and they shall there be confined according to the rules and regulations of said House of Refuge. The expenses of such removal shall be the same as allowed to sheriffs for like services, and a charge upon such prison, as part of its ordinary expenses to be certified by the inspectors.

[Repealed by the act of 14 Dec., 1847.]

1831.—CHAPTER 186.

AN ACT *to amend "An Act to create a Fund in aid of the Society for the Reformation of Juvenile Delinquents in the City of New York, and for other purposes, passed April* 29, 1829."

Passed April 21, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. There shall be paid annually by the Treasurer of the city of New York on the first Monday of July, to the Treasurer of the Society for the Reformation of Juvenile Delinquents in the City of New York, the sum of four thousand dollars for the use of said Society, out of the moneys appropriated for the support and maintenance of the poor of said city, by the act entitled "An Act to amend an act entitled 'An Act to lay a duty on strong liquors, and for regulating inns and taverns, so far as relates to the city of New York, and for other purposes,'" passed April 10, 1824.

[Repealed by act entitled "An Act for the prevention of intemperance, pauperism and crime," passed April 9, 1855.]

§ 2. The third section of the act entitled "An Act to create a fund in aid of the Society for the Reformation of Juvenile Delinquents in the City of New York, and for other purposes," passed April 29, 1829, and which directs the commissioners for collecting the duty of excise in the city of New York, to demand and receive one dollar and fifty cents in addition to the sum then required by law for a license to any tavern-keeper, grocer, or keeper of an ordinary or victualling house, or public garden, shall be, and the same is hereby repealed.

1831.—CHAPTER 234.

PART OF "AN ACT *to provide for sick and disabled seamen,*"

Passed April 22, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 13. The eight thousand dollars appropriated by the act entitled "An Act to create a fund in aid of the Society for the Reformation of Juvenile Delinquents in the City of New York, and for other purposes, passed April 29, 1829," shall continue to be paid to said Society, in the manner and at the time therein specified, out of the moneys collected from

passengers by the provisions of title four, chapter fourteen, part first of Revised Statutes; but if the amount collected from passengers should be insufficient (after paying all the expense of the quarantine establishment at Staten Island) to meet the eight thousand dollars now appropriated from the "Hospital Funds," for the support of the Society for the Reformation of Juvenile Delinquents in the City of New York, then the balance to make up said eight thousand dollars shall be appropriated annually from the State Treasury.

1833.—CHAPTER 144.

AN ACT *to amend the act to incorporate the Society for the Reformation of Juvenile Delinquents in the City of New York.*

Passed April 12, 1833.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Nine members of the Board of Managers of the said Society shall constitute a quorum for the transaction of business, and for the performance of all the powers and duties of the board, except the appointment and removal of any officer of the institution; for which business, twelve members of the said board shall constitute a quorum.

1839.—CHAPTER 13.

AN ACT *to amend an act entitled "An Act to create a fund in aid of the Society for the Reformation of Juvenile Delinquents in the City of New York, and for other purposes, passed April* 29, 1829."

Passed February 1, 1839.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. No theatre, circus or building, garden or grounds for exhibiting theatrical or equestrian performances in the city of New York, shall be opened for such exhibitions, unless the manager or proprietor thereof shall first, and annually, obtain from the mayor of the said city a license therefor, which license the said mayor is authorized to grant, to continue in force until the first day of May next ensuing the grant thereof; and every manager or proprietor, neglecting to take out such license, or consenting or allowing such performances without first taking out the same, and every owner or lessee of any building in said city, who shall lease or let out the same for the purpose of being occupied as such theatre or circus, or building for exhibiting theatrical or equestrian performances, or shall assent that the same be used for the purposes aforesaid; and the same shall have been so used by any manager or proprietor thereof who shall not have previously obtained such license, shall be subjected to a penalty of five hundred dollars for every such neglect or omission, which penalty the Society for the Reformation of Juvenile Delinquents in the said city, are hereby authorized in the name of the people of this State to prosecute, sue for and recover, for the use of said society.

§ 2. The said mayor is hereby authorized to grant licenses for said theatrical and equestrian performances for any term less than one year; and in any case where such license is for a term of three months or less, the said mayor is hereby authorized to commute for a sum less than said five hundred dollars, but in no case less than two hundred and fifty dollars for a theatre, or one hundred and fifty dollars for a circus.

§ 3. Upon granting every such license authorized by this act, or the act hereby amended, the said mayor shall receive from the person to whom the same shall be granted, the amount of said license, which amounts, as respectively received by him, shall be paid over to the Treasurer of the Society for the Reformation of Juvenile Delinquents in the City of New York, for the use of said Society.

§ 4. In case any manager or proprietor of any theatre, circus or building, garden or grounds, for exhibiting theatrical or equestrian performances, shall open or advertise to open, any theatre, circus or building, garden or grounds, for any such exhibition or exhibitions in said city, without first having obtained license therefor as is provided for by this act or the act hereby amended, it shall, and may be lawful for the said Society for the Reformation of Juvenile Delinquents in the said city to apply to the Chancellor of this State, or the Vice-Chancellor of the first circuit, for an injunction to restrain the opening thereof, until they shall have complied with the requisitions of this act and the act hereby amended, in obtaining such license, and also complying with such order as to costs as the Chancellor or Vice-Chancellor may deem just and proper to make, which injunction may be allowed upon a bill or petition to be exhibited in the name of said Society, in the same manner as injunctions are now usually allowed by the practice of the Court of Chancery.

§ 5. Any injunction allowed under this act may be served by posting the same upon the outer door of the theatre or circus, or building wherein such exhibitions may be proposed to be held, or if the same shall be in a garden or grounds, then by posting the same at or on or near the entrance-way to any such place of exhibition; and in case of any proceeding against the manager or proprietor of any such theatre, circus or building, or garden or grounds, as aforesaid, it shall not be necessary to prove the personal service of the injunction, but the service hereinbefore provided shall be deemed and held sufficient.

§ 6. The fourth and fifth sections of the act hereby amended are repealed.

§ 7. This act shall take effect immediately.

PART OF "*An Act to authorize the establishment of a House of Refuge for Juvenile Delinquents in Western New York.*

Passed May 8, 1846.

§ 13. The said Managers and Superintendent shall receive and take into the said House of Refuge, all male children under the age of eighteen years,† and all female children under the age of seventeen,† who shall be legally committed to the said House of Refuge as vagrants, or on a conviction for any criminal offence by any court having authority to make such commitments; the said Managers shall have power to place the said children committed to their care, during the minority of such children, at such employments, and cause them to be instructed in such branches of useful knowledge as shall be suitable to their years and capacities; and they shall have power, in their discretion, to bind out the said children, with their consent, as apprentices or servants, during their minority, to such

* N. B.—The amendment was the addition of the words "or other crime."
† Amended by Act of April 10, 1850.

under and by virtue of this act.

§ 15. Whenever the said House of Refuge shall, in the opinion of the Commissioners authorized to be appointed by the third section of this act, be in readiness for the reception of persons committed thereto, the said Commissioners shall make, under their hands and seals, duplicate certificates thereof, one of which they shall transmit by mail to the Governor of this State, and the other of which they shall cause to be filed in the office of the Clerk of the County in which such House of Refuge shall be situated. The Governor, on receiving such certificate, shall make an order designating the counties which shall thereafter be authorized to send juvenile delinquents to the said House of Refuge, and shall file the certificate of such Commissioners, and his said order, in the office of the Secretary of State. The said Secretary of State shall transmit by mail to the first Judge and County Clerk of each of the counties designated in said order a certified copy of such certificate and order.

[§ 15 repealed by Act of February 26, 1850.]

§ 16. From and after the time of making such order, the

courts of criminal jurisdiction of the several counties designated in said order, shall sentence to said House of Refuge every male under the age of eighteen years,* and every female under the age of seventeen years,* who shall be convicted before such court of any felony; the said courts, and the several magistrates of the said counties, may in their discretion sentence to said House of Refuge any such male or female who may be convicted before them of any petit larceny: and the courts and magistrates of the county where such House of Refuge may be located, may also, in their discretion, send to said House of Refuge, any such male or female who may be convicted before them as a vagrant. The Board of Supervisors of each of said counties, at their annual meeting, shall raise such a sum as shall in their opinion be sufficient to pay to the Treasurer of said House of Refuge fifty cents per week, for the support, maintenance and care of every person sentenced in their county to confinement therein; and the Treasurer of the said county shall quarterly pay, on the drafts of the Treasurer of the said House of Refuge, the said sum of fifty cents a week for each person supported in said House of Refuge, under a conviction had in such county.

§ 18. All provisions of existing laws requiring the courts of any of the counties which shall be named in the order to be made by the Governor, under the provisions of the fifteenth section of this act, to sentence persons to the House of Refuge in the city of New York, shall be from and after the making of the said order, repealed so far as the same relates to the counties named in the said order and shall be inconsistent with the provisions of this act.

* Amended by Act of April 10, 1850.

1847.—CHAPTER 252.

AN ACT *to amend An Act entitled "An Act more effectually to provide for common school education in the city of New York, passed May* 7, 1844."

Passed May 11, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The act entitled "An Act more effectually to provide for common school education in the city and county of New York," passed May 7, 1844, is hereby amended in thefollowing manner:

The eleventh section of said act shall be amended by inserting after the words "The School of the Mechanics' Society," the words "The School of the Society for the Reformation of Juvenile Delinquents in the City of New York, and the School of the Mechanics' Institute."

§ 2. To determine the shares of school money to which the School of the Society for the Reformation of Juvenile Delinquents in the City of New York, and the School of the Mechanics' Institute shall be entitled, in accordance with the general provisions of the twelfth section of the act hereby amended, the average number of children who shall have actually attended such school without charge, during the preceding year, shall be ascertained by adding together the number of such children present at each morning and evening session of said schools, and dividing the sum by four hundred and eighty, and all the provisions of said twelfth section inconsistent with this section are hereby repealed, so far as they affect the school of the said Society for the Reformation of Juvenile Delinquents.

[The eleventh section above amended, and the substitute for the above second section, now stand as sections twenty-two and fifteen of the act of July 3, 1851—which see *infra*.]

1848.—CHAPTER 337.

AN ACT *making appropriations for the Society for the Reformation of Juvenile Delinquents in the City of New York.*

Passed April 12, 1848—"three-fifhs being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Commissioners of Emigration shall pay to the Society for the Reformation of Juvenile Delinquents in the City of NewYork the sum of one thousand three hundred and thirty-three dollars and thirty-three cents, for two months of the year ending the thirty-first of December, eighteen hundred and forty-seven.

§ 2. The Commissioners of Emigration shall in like manner pay to the Society for the Reformation of Juvenile Delinquents in the City of New York, the sum of six thou-

[redacted]

§ 5. All sums of money paid out of the treasury of the State to meet any deficiency provided for in the next preceding section, shall be a charge against the said hospital fund, and shall be repaid and reimbursed to the State by the said Commissioners of Emigration, whenever there shall be a surplus of the said funds in their hands after paying the expense of the quarantine establishment at Staten Island.

§ 6. All moneys directed to be paid by this act out of the treasury of this State, shall be paid by the Treasurer on the warrant of the Comptroller; and the sum of fifteen thousand three hundred and thirty-three dollars and thirty-three cents is hereby appropriated for the purposes of this act, out of any money in the treasury not otherwise appropriated.

§ 7. This act shall take effect immediately.

1850.—CHAP. 24.

AN ACT *in relation to Juvenile Delinquents.*

Passed February 26, 1850—three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. From and after the passage of this act, it shall be the duty of the several courts having criminal jurisdiction, and who shall hold courts within the limits of the fourth, fifth, sixth, seventh and eighth judicial districts of this State, to order all juvenile delinquents by them respectively sentenced, to be removed (and all such delinquents convicted in the first, second and third judicial districts shall be ordered by such court to be removed to and confined in the House of Refuge established by the Society for the Reformation of Juvenile Delinquents in the City of New York) to the "Western House of Refuge for Juvenile Delinquents" in the city of Rochester.

§ 2. All convicts under the age of seventeen years, who shall be confined in the Auburn or Clinton prisons, and who shall hereafter be ordered by the inspectors of State prisons to be removed to a House of Refuge, shall be removed to said "Western House of Refuge" in the city of Rochester, under the same regulations and conditions as is contained in the ninety-first, ninety-second and ninety-third sections of the act entitled "An Act for the better regulation of the County and State prisons of this State, and consolidating and amending the existing laws in relation thereto," passed December 14, 1847.

§ 3. All acts and parts of acts, inconsistent with the provisions of this act, are hereby repealed.

§ 4. This act shall take effect immediately.

1850.—CHAPTER 304.

AN ACT *to amend "An Act to authorize the establishment of the House of Refuge for Juvenile Delinquents in Western New York, passed May 8th, 1846."*

Passed April 10, 1850.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The sixteenth section of the act entitled "An Act to authorize the establishment of the House of Refuge for Juvenile Delinquents in Western New York," passed May 8, 1846, is hereby amended, by striking out the word "eighteen" and inserting in the place thereof the word "sixteen," and by striking out the words "and every female under the age of seventeen years," so that the first part of the section shall read as follows:

From and after the time of making such order the courts of criminal jurisdiction of the several counties designated in such order, shall sentence to such House of Refuge every male under the age of sixteen years, who shall be convicted before such court of any felony.

§ 2. The said section shall be further amended by striking out the words "or female" whenever they occur in conjunction.

§ 3. This act shall not affect any sentence already passed.

1851.—CHAPTER 254.

AN ACT *to appropriate money to the Society for the Reformation of Juvenile Delinquents in the City of New York, and to enable them to erect new buildings.*

Passed June 20th, 1851—"three-fifths being present."

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The sum of fifty thousand dollars is hereby appropriated for the use of the Managers of the Society for

the Reformation of Juvenile Delinquents in the City of New York, to be expended by said Managers in the erection of buildings in the city of New York, of suitable size and description for the accommodation of at least one thousand inmates of said institution, and inclosing the grounds of the same.

§ 2. The Treasurer shall pay on the warrant of the Comptroller, to the Managers of the Society for the Reformation of Juvenile Delinquents in the City of New York, out of any moneys in the treasury not otherwise appropriated, twenty-five thousand dollars in the fiscal year commencing October 1st, 1851, and shall also pay in the same manner a further sum of twenty-five thousand dollars in the fiscal year commencing October 1st, 1852.

§ 3. No part of the money hereby appropriated shall be paid to said Managers, until satisfactory evidence is produced to the Comptroller that said Managers hold, and have appropriated for the use of said Society, at least ten acres of land in the county of New York, nor until said Managers have given to the Comptroller satisfactory security for the proper expenditure of said money toward the objects contemplated in the first section of this act.

§ 4. It shall be the duty of said Managers to make a detailed report of all moneys received and expended by them by virtue of this act, and of the progress made in the erection of said buildings and the inclosure of said grounds, to the Comptroller on or before the first day of January next, and as often thereafter as any further sums may be received and expended by them for the purposes aforesaid.

§ 5. The second instalment mentioned in the second section of this act shall not be paid to said Managers until the expenditure of the previous instalments shall be accounted for by said Managers to the satisfaction of the Comptroller.

§ 6. No part of the moneys hereby appropriated shall be paid to said Managers, until the plan of said building and inclosures shall have been submitted to and approved by the Governor and Comptroller.

§ 7. The premises now under lease to the Managers of the Society for the Reformation of Juvenile Delinquents in the City of New York for their House of Refuge, shall, on the sale thereof, be released and fully discharged from the lien and incumbrance of the sinking fund of the city of New York, existing pursuant to the provisions of the act entitled "An Act creating a public fund or stock in the city of New York, called the Croton Water Stock, and in relation to the sinking fund of said city," passed May 13th, 1845; or pursuant to the provisions of the act entitled "An Act to regulate the finances of said city," passed June 8th, 1812; and instead of such lien and incumbrance, any premises which shall be procured by the said Society for the site and erection thereon of their buildings and the appurtenances thereto, shall be subject to the lien and incumbrance of said sinking fund, in the same manner, and to the same extent, that the premises now occupied by said Society, are now subject thereto.

§ 8. This act shall take effect immediately.

1851.—CHAPTER 386.

PARTS OF "AN ACT *to amend, consolidate, and reduce to one Act the various Acts relative to the common schools of the City of New York.*"

Passed July 3, 1851.

OF THE SUPPORT OF THE SCHOOLS.

§ 15. The said Board of Supervisors shall annually raise and collect, by tax upon the inhabitants of the said city and county, a sum of money equal to the sum specified in such notice, at the time and in the same manner as the contin-

gent charges of the said city and county are levied and collected; also a sum of money equal to one-twentieth of one per cent. of the value of the real and personal property in the said city liable to be assessed thereon, and pay the same into the city treasury, to be applied to the purposes of common schools in the said city; and the Board of Education shall apportion the money so raised to each of the schools hereafter provided for by this act, except the Free Academy and the evening schools, according to the number of children over four and under twenty-one years of age, who were actual residents of the city and county of New York at the time of their attendance on such schools, without charge, the preceding year; and the average shall be ascertained by adding together the number of such children present at each morning and afternoon session of not less than three hours, and dividing the sum by four hundred and sixty; and if any school shall have been organized since the last annual apportionment, the average shall be ascertained by dividing by a number corresponding to the actual number of morning and evening sessions, of not less than three hours each, held since the organization of such school; and the sum apportioned to any schools other than the Ward Schools, shall be paid to the Trustees, Managers, or Directors of such schools respectively, by drafts on the City Chamberlain, to be signed by the president and clerk of said board, and made payable to the order of the Treasurers of said Trustees, Managers, or Directors.

OF THE SCHOOLS ENTITLED TO PARTICIPATE IN THE APPORTIONMENT.

§ 22. The New York Orphan Asylum school, the Roman Catholic Orphan Asylum school, the schools of the two half-orphan asylums, the school of the Mechanics' Society, the school of the Society for the Reformation of Juvenile Delinquents in the City of New York, the Hamilton Free school, the school of the Leake and Watts' Orphan House, the school connected with the alms-house of the said city, the

school of the Association for the benefit of Colored Orphans, the schools of the American Female Guardian Society, the schools of the Society for the Promotion of Education among Colored Children, the schools organized under the act entitled "An Act to extend to the city and county of New York the provisions of the general act in relation to Common Schools, passed April 11, 1842," or an act to amend the same passed April 18, 1843, or an act entitled "An Act more effectually to provide for Common School Education in the city and county of New York," passed May 7, 1844, or any of the acts amending the same, and including such Normal Schools for the education of teachers as the Board of Education may organize, and the Normal School of the Public School Society for the education of teachers, and such schools as may be organized under the provisions of this act, shall be subject to the general supervision of the Board of Education, and shall be entitled to participate in the apportionment of the school moneys as provided for by this act; but they shall be under the immediate direction of their respective Trustees, Managers, and Directors, as herein provided.

1853.—CHAPTER 391.

AN ACT *to enable the Society for the Reformation of Juvenile Delinquents in the City of New York, to complete their new buildings, and to appropriate money therefor.*

Passed June 17th, 1853—three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The sum of fifty thousand dollars is hereby appropriated for the use of the Managers of the Society for the Reformation of Juvenile Delinquents in the City of New York, to be expended by said Managers in continuing the erection of the buildings in the city of New York, on the site and of the description provided for by chapter two hundred

and fifty four of the laws of eighteen hundred and fifty-one. which said buildings are now in process of construction.

§ 2. The Treasurer shall pay on the warrant of the Comptroller, to the Managers of said Society, out of any moneys in the treasury belonging to the general fund not otherwise appropriated, the said sum of fifty thousand dollars, in two instalments of twenty-five thousand dollars each.

§ 3. No part of the money hereby appropriated shall be paid to said Managers, until said Managers have given to the Comptroller satisfactory security for the proper expenditure of said money towards the objects contemplated in the first section of this act.

§ 4. It shall be the duty of said Managers to make a detailed report of all moneys received and expended by them by virtue of this act, and of the progress made in the erection of said buildings and the inclosure of the grounds connected therewith, to the Comptroller, on or before the first day of January next.

§ 5. The second instalment of twenty-five thousand dollars, mentioned in the second section of this act, shall not be paid to said Managers until the expenditure of the first instalment shall be accounted for, by said managers, to the satisfaction of the Comptroller.

1853.—CHAPTER 608.

AN ACT *in relation to the confinement of juvenile offenders under sentences of the Courts of the United States.*

Passed July 21, 1853.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. It shall be the duty of the respective keepers of the House of Refuge in the city of New York, and the

Western House of Refuge, to receive and safely keep in their respective houses, subject to the regulations and discipline thereof, any criminal under the age of sixteen years, convicted of any offences against the United States, sentenced to imprisonment therein by any court of the United States sitting within this State, until such sentence be executed, or until such convict shall be discharged by due course of law; the United States supporting such convict and paying the expenses attendant upon the execution of such sentence.

§ 2. This act shall take effect immediately.

1855.—CHAPTER 539.

PART OF "*An Act to provide for certain expenses of Government.*"

Passed April 14, 1855.

SECTION 1. The Treasurer shall pay on the warrant of the Comptroller the several sums, or so much thereof as may be necessary in each case, for the purposes and to the persons respectively hereinafter specified.

* * * * * * * *

To the Managers of the Society for the Reformation of Juvenile Delinquents, the sum of thirty-five thousand dollars, to be applied by them toward the building of a female house of refuge, as contemplated by the plan heretofore adopted; said sum not to be paid until said Managers shall produce to the Comptroller and Secretary of State evidence satisfactory to them that said sum can and will be applied toward said building in such manner that by the expenditure of said sum, female delinquents can be accommodated in said building at an early day, in such manner as to relieve the Managers in some degree at least from the difficulty they now experience, from being obliged to accommodate both male and female delinquents in their present finished building.

* * * * * * * *

1859.—CHAPTER 48.

AN ACT *in relation to the theatres in the city of New York.*

Passed March 18, 1859.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1.—It shall not be lawful for any owner, lessee, manager, agent or officer of any theatre in the city of New York, to admit to any theatrical exhibition held in the evening, any minor under the age of fourteen years, unless such minor is accompanied by and is in the care of some adult person.

§ 2. Any person violating the above provision shall be guilty of a misdemeanor, and shall be liable to a fine, not less than twenty-five dollars nor more than one hundred dollars, or imprisonment for a term not less than ten nor more than ninety days, for each offence.

§ 3. All moneys recovered under the provisions of this act for fines, shall be paid over to the Treasurer of the Society for the Reformation of Juvenile Delinquents in the City of New York, for the benefit of such Society.

1859.—CHAPTER 254.

AN ACT *empowering the Boards of Supervisors in the respective counties of this State, to fix and determine the compensation to be allowed for the conveyance of juvenile delinquents to houses of refuge, and insane criminals to insane asylums.*

Passed April 12, 1859—three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Boards of Supervisors in the respective counties of this State are hereby empowered, and it shall be their duty, annually to fix and determine the compensation to be allowed and paid to officers for the conveyance

of juvenile delinquents to the houses of refuge, and of lunatics to the insane asylums, and no other or greater amount than that so fixed and determined shall be allowed and paid for such service.

§ 2. So much of the seventeenth section of chapter two, title eight, part four of the Revised Statutes, as is inconsistent with the provisions of this act, as well as all other laws conflicting herewith, are hereby repealed.

§ 3. This act shall take effect immediately.

1860.—CHAPTER 241.

AN ACT *to amend an act entitled "An Act to incorporate the Society for the Reformation of Juvenile Delinquents in the City of New York, passed March 29, 1824."*

Passed April 10, 1860—three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The act entitled "An Act to incorporate the Society for the Reformation of Juvenile Delinquents in the City of New York," passed March 29, 1824, is hereby amended, by adding to the fourth section thereof the following words:

The Managers of the said Society shall receive into the house of refuge established by them in the city of New York, whenever they may have room for that purpose, all such children as shall be taken up or committed as vagrants in any city or county of this State, and might now if convicted of criminal offences in such city or county, be sent as directed by law to said house of refuge, if in the judgment of the court or magistrate by whom they shall be committed as vagrants, the aforesaid children shall be deemed proper persons to be sent to said institution. The powers and duties of the said Managers in relation to the children whom they shall receive in virtue of this act, shall be the

same in all things as now provided by law in case of children convicted of criminal offences and committed to the charge of said Managers.

1860.—CHAPTER 501.

AN ACT *to preserve the public peace and order on the first day of the week, commonly called Sunday.*

Passed April 17, 1860—three-fifths being present.

The People of the State of New York, represented in Senate and Assembly do enact as follows:

SECTION 1. It shall not be lawful to exhibit on the first day of the week commonly called Sunday, to the public, in any building, garden, grounds, concert-room or other room or place within the city and county of New York, any interlude, tragedy, comedy, opera, ballet, play, farce, negro minstrelsy, negro or other dancing, or any other entertainment of the stage, or any part or parts therein, or any equestrian, circus or dramatic performance, or any performance of jugglers, acrobats or rope dancing.

§ 2. Any person offending against the provisions of this law, and every person aiding in such exhibition, by advertisement or otherwise, and every owner or lessee of any building, part of a building, ground, garden or concert-room, or other room or place, who shall lease or let out the same for the purpose of any such exhibition or performance, or assent that the same be used for any such purpose, if the same shall be used for such purpose, shall be guilty of a misdemeanor, and in addition to the punishment therefor provided by law, shall be subjected to a penalty of five hundred dollars, which penalty the Society for the Reformation of Juvenile Delinquents in said city are hereby authorized, in the name of the people of this State, to prosecute, sue for and recover for the use of said Society; in addition to which every such exhibition or performance

shall of itself forfeit, vacate and annul and render void and of no effect, any license which shall have been previously obtained by any manager, proprietor, owner or lessee consenting to, causing or allowing, or letting any part of a building for the purpose of such exhibition and performance.

§ 3. This act shall take effect immediately.

1862.—CHAPTER 281.

AN ACT *to regulate places of public amusement in the cities and incorporated villages of this State.*

Passed April 17, 1862—three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. It shall not be lawful to exhibit to the public in any building, garden, or grounds, concert-room, or other place or room within the city of New York, any interlude, tragedy, comedy, opera, ballet, play, farce, negro minstrelsy, negro or other dancing, or any other entertainment of the stage, or any part or parts therein, or any equestrian, circus, or dramatic performance, or any performance of jugglers or rope dancing, acrobats, until a license for such exhibition shall have been first had and obtained pursuant to and at the same rate provided for theatrical performances in an act entitled "An Act to amend an act entitled an act to create a fund in aid of the Society for the Reformation of Juvenile Delinquents in the City of New York, and for other purposes, passed February first, eighteen hundred and thirty-nine;" and every manager or proprietor of any such exhibition or performance, who shall neglect to take out such license, or consent to, cause or allow any such exhibition or performance, or any single one of them without such license, and every person aiding in such exhibition and every owner or lessee of any building, part of a building, garden, grounds, concert-room, or other room or place, who shall lease or let the same for the purpose of any such

exhibition or performance, or assent that the same be used for any such purpose except as permitted by such license, and without such license having been previously obtained and then in force, if the same shall be used for such purpose, shall incur the penalties and be subjected to the proceedings for an injunction provided for by the other provisions contained in the said act, which penalty the Society for the Reformation of Juvenile Delinquents in said city are hereby authorized to prosecute, sue for, and recover for the use of the said Society, in the name of the people of the State of New York.

§ 2. It shall not be lawful to sell or furnish any wine, beer, or strong or spirituous liquors to any person in the auditorium or lobbies of such place of exhibition or performance mentioned in the first section of this act, or in any apartment connected therewith by any door, window or other aperture; nor shall it be lawful to employ or furnish, or permit or assent to the employment or attendance of any female to wait on or attend in any manner, or furnish refreshments to the audience or spectators or any of them, at any of the exhibitions or performances mentioned in the first section of this act, or at any other place of public amusement in the city of New York.

§ 3. No license shall be granted for any exhibition or performance given in violation of the second section of this act, and any and every exhibition or performance at which any of the provisions of the second section of this act shall be violated shall of itself vacate and annul and render void and of no effect any license which shall have been previously obtained by any manager, proprietor, owner or lessee consenting to, causing or allowing or letting any part of a building for the purpose of such exhibition and performance; and any license provided for by the first section of this act may be revoked and annulled by the officer or officers granting the same, upon proof of a violation of any of the provisions of this act. Such proof shall be taken be-

fore such officer upon notice of not less than two days to show cause why such license should not be revoked; said officer shall hear the proofs and allegations in the case, and determine the same summarily; and no appeal shall be taken or review be had from such determination. And any person whose license shall have been revoked or annulled, shall not thereafter be entitled to a license under the provisions of this act. On any examination before an officer pursuant to a notice to show cause as aforesaid, the accused party may be a witness in his own behalf.

§ 4. Any person violating any of the provisions of this act, or employing or assenting to the employment or attendance of any person contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the penitentiary for a term not less than three months nor more than one year, or by a fine not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment.

§ 5. It shall be the duty of every chief of police, sheriff, deputy sheriff, constable, captain of police, policeman, and every other police officer, to enter at any time said places of amusement, and to arrest and convey any person or persons violating any provision of this act, forthwith, before any Police Justice, or Recorder, or Magistrate, having jurisdiction in said city, there to be dealt with according to law.

§ 6. The provisions of this act shall apply to all the cities and incorporated villages of this State, but the license to be obtained in every city or incorporated village other than the city of New York, shall be issued under such terms, and under such regulations, as the municipal authorities of the said cities or villages may respectively prescribe; and the fines and penalties for any violation of any of the provisions of this act, in such other cities or incorporated villages, re-

spectively, other than as mentioned in section four of this act, shall be sued for and recovered in the name of the Overseer of the Poor of such city or incorporated village or the town in which such incorporated village is situate, or such other officer as the municipal or village authorities thereof may direct, for the benefit of the poor thereof.

§ 7. This act shall take effect immediately.

1865.—CHAPTER 172.

AN ACT *to amend an Act entitled "An Act to incorporate the Society for the Reformation of Juvenile Delinquents in the City of New York, passed March twenty-ninth, eighteen hundred and twenty-four."*

Passed March 22, 1865—three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The managers of the Society for the Reformation of Juvenile Delinquents shall, as soon as conveniently may be after the next annual election of the society, arrange themselves into three classes of ten each, to be determined by lot, to serve respectively one, two, and three years; and at every subsequent election, at the expiration of the terms thus designated, ten persons shall be chosen as managers to serve for the term of three years; any vacancy that may occur in any class during the term of service of said class may be filled by the board of managers for the unexpired portion of said term.

§ 2. The fourth section of the act entitled "An act to incorporate the Society for the Reformation of Juvenile Delinquents in the City of New York, passed March twenty-ninth, eighteen hundred and twenty-four," is amended by striking out the following words: "Provided, that the charge and power of the said managers upon and over the said children

shall not extend in the case of females beyond the age of eighteen years."

§ 3. It shall be the duty of all courts and magistrates by whom any juvenile delinquent shall be committed or sent to the house of refuge in the city of New York, to ascertain the age of such delinquent by such proof as may be in their power and to insert such age in the order of commitment, and the age thus ascertained shall be deemed and taken to be the true age of such delinquent.

§ 4. In cases where the age of the delinquent so committed is not so ascertained and inserted in the order of commitment, the said managers shall as soon as may be after such delinquent shall be received by them, ascertain the age of such delinquent by such proof as may be in their power and cause the same to be entered in a book to be designated by them for that purpose, and the age thus ascertained shall be deemed and taken to be the true age of such delinquent.

§ 5. All children under the age of sixteen, in the several counties which now are or hereafter shall be designated by law as the counties from which juvenile delinquents shall be sent to the house of refuge in the city of New York, deserting their homes without good and sufficient cause, or keeping company with dissolute or vicious persons against the lawful commands of their fathers, mothers, guardians, or other persons standing in the place of a parent, shall be deemed disorderly children.

§ 6. Upon complaint made on oath to any police magistrate or justice of the peace, against any child within his county under the age of sixteen, by his or her parent or guardian, or other person standing to him or her in place of a parent, as being disorderly, such magistrate or justice shall issue his warrant for the apprehension of the offender, and cause him or her to be brought before himself or any

other police magistrate or justice of the said county for examination.

§ 7. If such magistrate or justice be satisfied by competent testimony that such person is a disorderly child within the description aforesaid, he shall make up and sign a record of conviction thereof, and shall by warrant under his hand commit such person to the house of refuge established by the Managers of the Society for the Reformation of Juvenile Delinquents in the City of New York, and the powers and duties of the said managers in relation to the said children shall be the same in all things as are prescribed as to other juvenile delinquents received by them; provided, however, that any person committed under this act shall have the same right of appeal now secured by law to persons convicted of criminal offence; but on any such appeal mere informality in the issuing of any warrant shall not be held to be sufficient cause for granting a discharge.

§ 8. This act shall take effect immediately.

1869.—CHAPTER 285.

AN ACT *to amend an act entitled "An act to incorporate the Society for the Reformation of Juvenile Delinquents in the City of New York, passed March twenty-ninth, eighteen hundred and twenty-four."*

Passed April 22, 1869.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The Managers of the Society for the Reformation of Juvenile Delinquents are hereby authorized to establish a school-ship for the purpose of instructing the boys in their charge in navigation and the duties of seamanship, and for that purpose they are authorized to purchase and hold any vessel or vessels, and to navigate the same into and upon any of the ports and waters of the State.

§ 2. The said society may employ such superintendents and officers for the government and instruction of the boys, and from time to time make such rules and regulations for the government of the school-ship as they may deem expedient.

§ 3. The said society shall have the control of the school-ship and other vessels procured for the institution, and may transfer from the House of Refuge on board of said ship or vessels such boys under their charge as they may elect, and shall cause them to be instructed in navigation and the duties of seamanship, and may send any boy upon a voyage at sea, and in his behalf enter into necessary contract therefor, with his assent or the assent of his parent or guardian, if it is practicable to obtain the same.

§ 4 This act shall take effect immediately.

1872.—CHAPTER 113.

AN ACT *to relieve Juvenile Delinquents from certain disqualifications.*

Passed March 18, 1872.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The disqualification to testify created by section twenty-three (original number) of title seven, chapter first of part fourth of the Revised Statutes, and the prohibition to vote at any election contained in section fifteen of chapter two hundred and forty of the laws of eighteen hundred and forty-seven, shall not apply to a person heretofore convicted or hereafter to be convicted of felony or of any infamous crime, and in consequence thereof committed to one of the houses of refuge or other reformatories organized under the laws of this State.

§ 2. This act shall take effect immediately.

N.B.—The above act was passed in consequence of the decision of the Court of Appeals, in the case of The People *vs.* Park, 41 N. Y. Rep. 21.

1872.—CHAPTER 733.

PART OF "AN ACT *making appropriations for certain expenses of government, and for supplying deficiencies in former appropriations.*"

Passed May 15, 1872, by a two-thirds vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Treasurer shall pay on the warrant of the Comptroller, from the several funds specified, to the persons indicated in this act, the amounts named or such parts of those amounts as shall be sufficient to accomplish in full the purposes designated by the appropriations.

* * * * * * *

For the Managers of the Society for the Reformation of Juvenile Delinquents in the City of New York, commonly called the House of Refuge on Randall's Island, for deficiencies in the support and maintenance of juvenile delinquents therein for the year ending on the first day of January, eighteen hundred and seventy-two, the sum of twelve thousand six hundred and ninety dollars and ninety-eight cents; and to enable the Board of Managers of said institution to make necessary alterations in the school buildings, kitchen and laundry thereof, and to erect a suitable workshop on the premises for the temporary employment of a class of boys discharged from confinement and awaiting employment elsewhere, the sum of thirty-five thousand dollars.

Chapter seven hundred and twenty-four of the laws of eighteen hundred and seventy-one, entitled "An Act to

define the powers of the Corporation Attorney of the City of New York, in suits for fines and penalties," passed April twenty-six, eighteen hundred and seventy-one, is hereby repealed, and section three of chapter thirteen of the Laws of eighteen hundred and thirty-nine is hereby re-enacted, so that all license money received by the Mayor or other authorities in the city of New York, for permission to exhibit theatrical or equestrian performances within said city, shall be paid over by the officer receiving the same to the Treasurer of the Society for the Reformation of Juvenile Delinquents in the City of New York, for the use of said society.

1872.—CHAPTER 836.

AN ACT *to regulate places of public amusement in the City of New York.*

Passed May 22, 1872, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. It shall not be lawful to exhibit to the public in any building, garden or grounds, concert room or other place or room within the city of New York, any interlude, tragedy, comedy, opera, ballet, play, farce, minstrels, or dancing, or any other entertainment of the stage, or any part or parts therein, or any equestrian, circus or dramatic performance, or any performance of jugglers or rope dancing, acrobats, until a license for the place of such exhibition for such purpose shall have been first had and obtained as hereinafter provided.

§ 2. The Mayor of the City of New York is hereby authorized and empowered to grant such license, to continue in force until the first day of May next ensuing the grant thereof, on receiving for each license so granted and before the issuing thereof, the sum of five hundred dollars; and every manager or proprietor of any such exhibition or performance who shall neglect to take out such license, or consent or cause or allow any such exhibition or performance, or any single one of them without such license, and every person aiding in such exhibition, and every owner or lessee of any building, part of a building, garden, grounds, concert room, or other room or place, who shall lease or let the same for the purpose of any such exhibition or performance, or assent that the same be used for any such purpose, except as permitted by such license, and without such license having been previously obtained and then in force, if the same shall be used for such purpose, shall be subjected to a penalty of one hundred dollars for every such exhibition or performance, which penalty the Society for the Reformation of Juvenile Delinquents in said city is hereby authorized to prosecute, sue for and recover for the use of the said society in the name of the people of the State of New York.

§ 3. The said Mayor is hereby authorized to grant licenses for said exhibitions or performances for any term less than one year, and in any case where such license is for a term of three months or less, the said Mayor is hereby authorized to commute for a sum less than said five hundred dollars, but in no case less than two hundred and fifty dollars for a theatre, or one hundred and fifty dollars for a circus, concert room, or other building or place whatsoever.

§ 4. Upon granting every such license authorized by this act, the said Mayor shall receive from the person to whom the same shall be granted the amount payable for said license as above provided, which amounts as respectively received by him shall be paid over to the Treasurer of the Society for the Reformation of Juvenile Delinquents in the City of New York, for the use of said society.

§ 5. Any license provided for by this act may be revoked and annulled by any judge or justice of any court of record in said city, upon proof of a violation of any of the provisions of this act; such proof shall be taken before such judge

or justice upon notice of not less than two days, to show cause why such license should not be revoked; said judge or justice shall hear the proofs and allegations in the case, and determine the same summarily; and no appeal shall be taken from such determination. And any person whose license shall have been revoked or annulled shall not thereafter be entitled to a license under the provisions of this act. On any examination before an officer pursuant to a notice to show cause as aforesaid, the accused party may be a witness in his own behalf.

§ 6. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the penitentiary for a term not less than three months nor more than one year, or by a fine not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment.

§ 7. It shall be the duty of every chief of police, sheriff, deputy sheriff, constable, captain of police, policeman and every other police officer to enter at any time said places of amusement and to arrest and convey any person or persons violating any provisions of this act, forthwith, before any police justice, or recorder, or magistrate having jurisdiction in said city, there to be dealt with according to law.

§ 8. In case any person shall open, or advertise to open any theatre, circus or building, garden or grounds, concert room or other place for any such exhibition or performance in said city, without first having obtained license therefor as provided for by this act, it shall and may be lawful for the said Society for the Reformation of Juvenile Delinquents in the said city to apply to the Supreme Court, or any justice thereof for an injunction to restrain the opening thereof until he shall have complied with the requisitions of this act in obtaining such license, and also with such order as to costs as such court or justice may deem just and proper to make; which injunction may be allowed upon a complaint to be

in the name of said society in the same manner as injunctions are now usually allowed by the practice of said court.

§ 9. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 10. This act shall take effect immediately.

1873.—CHAPTER 359.

AN ACT *to amend an act passed March twenty-ninth, eighteen hundred and twenty-four, entitled "An Act to incorporate the Society for the Reformation of Juvenile Delinquents in the City of New York."*

Passed April 30, 1873—three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Whenever it shall appear to the Managers of the Society for the Reformation of Juvenile Delinquents in the City of New York, that any of the delinquents confined in the House of Refuge established by said Society in the City of New York, or under their care, shall have been guilty of attempting wilfully to set fire to any building belonging to the institution, or any combustible matter for the purpose of setting fire to any such building, or that any delinquent shall have been guilty of violence to any officer or inmate of the institution, or of openly resisting the lawful authority of the officers of the institution, or of attempting by threats or otherwise to incite others to do so, or shall by gross or habitual misconduct exert a dangerous and pernicious influence over the other delinquents, it shall be lawful for the said managers to submit a written statement of the facts in any such case to a justice of the Supreme Court in the first judicial district, or of the Superior Court or to a judge of the Court of Common Pleas of the City and County of New York, and thereupon to apply to him for an order authori-

zing the temporary confinement of such delinquent for correction in the penitentiary or county jail of the County of New York, or in the penitentiary or county jail of the county from which the delinquent was committed.

§ 2. It shall be the duty of the justice or judge so applied to, forthwith summarily to inquire into and take proof of the facts of the case, and if it shall appear to him that the statement is substantially true, and that the case is one in which the ends designed to be accomplished by the institution or its general welfare will be best promoted by his doing so, he shall thereupon make an order authorizing the confinement of the delinquent in the said Penitentiary or County Jail in the City of New York, or in the Penitentiary or County Jail of the county from which the delinquent was committed, for a limited period to be expressed in the order, and not exceeding the period of six months. And the superintendent or keeper of the said penitentiary or county jail determined upon by said judge and named in said order, is hereby authorized and required to receive such delinquent and detain him during the period expressed in such order, unless the Managers shall previously to the expiration of such period direct him to be returned to the said House of Refuge.

§ 3. At the expiration of the period limited by the said order, or sooner if the said Managers shall direct it, the superintendent or keeper of the said penitentiary or county jail shall return such delinquent to the custody and care of the superintendent of the said House of Refuge, to be further dealt with according to the laws, rules, and regulations ordained for its government.

§ 4. No person convicted of vagrancy or of any criminal offence, and committed to or confined in the House of Refuge established by the said Society in the City of New York shall be discharged by *habeas corpus* or *certiorari* from such confinement, on the ground that no certificate of such conviction has been filed, or on the ground of any variance, misdescrip-

tion, misnomer, or any defects or imperfections in matter of form contained in the record, process, entries, judgment, order of commitment, returns, or other proceedings under or in pursuance of which such commitment was made; *provided*, that such certificate be filed or such variance, misdescription, misnomer, or defect or imperfection in matter of form be corrected by order of the Court before which such writ of *habeas corpus* or *certiorari* is returnable.

§ 5. This act shall take effect immediately.

OPINIONS

OF GOVERNORS OF THE STATE

UPON THEIR RIGHT TO PARDON INMATES OF THE HOUSE OF REFUGE.—EXTRACTS OF LETTERS.

GOVERNOR SEWARD.

October 7, 1839.

. . . As the Board of Commissioners (Managers) exercise the power of discharging persons from the House of Refuge, convicted of offences less than felony, I shall very cheerfully refer applications to them, unless there be extraordinary circumstances, which shall seem to justify a different course.

WILLIAM H. SEWARD.

GOVERNOR BOUCK.

May, 1843.

In reply to a letter from Hon. Stephen Allen, then President of the Board of Managers, stating that "the removal by pardon, of the delinquent children placed in the care of the Managers will not only be attended with great injury to the children, but will destroy the corrective influence of the Institution upon those who remain," etc., Governor Bouck says:

. . . In the mean time I wish to assure you of my willingness to co-operate in rendering the Institution over which you preside, effective and useful. I have granted a few pardons to those confined in the Refuge, under impressions that the law authorized it. I will, however, examine the subject and apprise you of the course I shall feel it my duty to pursue.

WILLIAM C. BOUCK.

All applications subsequently made to Governor Bouck were referred by him to the Managers.

GOVERNOR WRIGHT, 1845, 1846.

June 26, 1845.

. . . I have been studying the law too in relation to these subjects of that prison, and I cannot determine from my present researches, what they are in a legal sense, how to consider them, or how they are to be got out when once put there. I have ascertained from the office of the Secretary of State that they are not considered subjects for the exercise of the pardoning power, for there has never been a pardon issued for one of them. They cannot therefore have been considered convicts in a legal sense. I conclude they must be considered as apprentices to the Corporation, and subject solely to the disposition of the Managers within the terms of their Act of Incorporation and the laws modifying it. . . .

SILAS WRIGHT.

October 4, 1845.

. . . If not in positive conflict with your rules, and what you consider your legal powers, I hope you will find in the circumstances of this case an inducement to comply with the suggestions made by the Recorder of Buffalo, and which, it seems, had the approbation of the other judges, and of the jury which pronounced the verdict against these very juvenile offenders. . . . . If my feelings are urging me to ask of you what it is improper that you should do, or what is against your positive rules or your settled conviction of your legal powers, I trust you will pardon me upon the assurance that I am not conscious that such is the character of my request. If, on the contrary, there shall be no such objections, then I hope you will permit me again to urge your patient examination of the case as presented by the Recorder, before you reject our joint applications. . . .

SILAS WRIGHT.

December 30, 1846.

. . . All these papers satisfy me that you are better able to dispose of this young lad safely and justly than I am, or

can be, and as I have issued no pardon in any case to the House of Refuge, I cannot bring myself to begin at this late period of my official life. . . .

SILAS WRIGHT.

GOVERNOR FISH.

October 10, 1849.

The Managers of the House of Refuge have the power to discharge those committed to them. I have referred the case of your two boys to them, with a special request, etc. .

HAMILTON FISH.

GOVERNOR SEYMOUR.

January 17, 1853.

. . . I have ascertained that I was mistaken in supposing that I had the power of discharging convicts from the House of Refuge. I am satisfied Governor Wright's decision is correct. . . .

HORATIO SEYMOUR.

GOVERNOR KING.

June 23, 1857.

. . . I have come to the conclusion that the authority of the Managers of the House of Refuge over children under their care, should not be interfered with or embarrassed by any act of the Executive of the character referred to [pardon], but should be left free to carry out the clear and laudable purposes for which these Institutions were founded. I erred, therefore, in granting pardon to N., etc.

JOHN A. KING.

JUDICIAL OPINIONS.

SUPREME COURT.

THE PEOPLE, ETC., ON THE PETITION ON BEHALF OF THOMAS TOBANS,
vs.
THE GOVERNORS OF THE HOUSE OF REFUGE.
} *December*, 1859.

A. B. JAMES, *J.*—A writ of *habeas corpus*, issued on the petition of the father of Thomas Tobans, directed to the Governors, etc., of the House of Refuge, commanding them to produce the body of said Thomas, etc., was served upon the Officers of that Institution, to which they returned that at the time of the allowance of said writ, the said Thomas was not, nor had he at any time since been, nor was he now, in their possession or custody, or under their control, power, or restraint, or by them restrained of his liberty; that the said Thomas, in August, 1857, was convicted as a vagrant and committed to the House of Refuge; that he was received under such commitment, being a minor, and remained until April, 1858, when he was placed by the Managers of said Institution at employment with Wesley M'Dowell, of Lexington, Illinois; but that no indentures of apprenticeship had been executed, and hence the respondents were unable to produce the body of said Thomas, as commanded by said writ.

S. H. STEWART, *for Petitioner.*

H. A. CRAM, *for Respondents.*

The only question presented for consideration is, the sufficiency of the excuse offered by the return for the non-production of the body of Thomas Tobans.

The truth of the return not being controverted, it appears that the respondents had not, at the time of granting the writ, nor at any time since, the custody or possession of the person named; and although they had such custody at a time long prior to the granting of such writ, it does not appear that such custody was parted with in bad faith, or for the purpose of unlawfully restraining the said Thomas of his liberty, or of evading the command of said writ.

It is, however, insisted by counsel that the excuse is wholly insufficient; that the transfer of said Thomas to M'Dowell was wholly without authority, illegal, and void; that the Managers of the House of Refuge, by the terms of their charter, could only put the said Thomas to employment within the precincts of that Institution, or bind him out to some farmer residing within the State; and that, having sent him beyond the State, they should be compelled to produce him, in answer to the command of the writ.

The Statute of 1824 authorized the Managers of the House of Refuge to receive children convicted of vagrancy, and gives power to place them, during their minority, at employment suitable to their years and capacities, and in the discretion of said Managers, with the consent of said children, to bind them out as apprentices, servants, etc.

The legal right of the respondents, therefore, to place the said Thomas at employment is clear, and the question of binding him out was a matter wholly in their discretion.

There is nothing in the act limiting the employment of such children to the precincts of said Institution, or their binding out to persons residing within the state.

Such a construction would greatly circumscribe the Institution in its efforts to care for the well-being of those committed to its charge without benefiting any one.

The statute wisely gives to the Board of Managers a broad discretion in the matter, leaving to their determination the kind of employment and instruction, the persons with whom, and the place where, it shall be given; and I can see no necessity of its being limited to this city or this state, so long as the future well-being of the child is considered. If suitable persons can be found out of the state who will take charge of them, I see no legal objection to their selection.

In this case, the respondents made a lawful disposition of Thomas. For aught that appears or is pretended, he is in the care and custody of a proper and suitable person. He is not now, nor was he at the time of granting the said writ, in the possession of the respondents; and this being so, the excuse for the non-production of the body is sufficient, and the writ should be discharged.

SUPREME COURT—KINGS COUNTY.

THE PEOPLE *ex rel.* THOMAS HOEY
vs.
THE SUPERINTENDENT OF THE HOUSE OF REFUGE.
} *April*, 1860.

W. H. SCRUGHAM, *J.*—The return to this writ of *habeas corpus* is made by the Superintendent of the House of Refuge on Randall's Island, and states that Joseph Hoey is held and detained there by the Managers, on the authority of a warrant of commitment which is annexed to said return, and which recites the conviction of the said Joseph Hoey, on the day of its date, of petit larceny, before James H. Cornwell, Esq., Police Justice of the city of Brooklyn, sitting as a Court of Special Sessions.

The return is objected to on the ground that it is not verified, and that the Superintendent of the House of Refuge is not a sworn public officer.

I will allow the return to be amended in that respect.

The prisoner had the right on the return of the writ to deny on oath any of the material facts set forth in the return, or allege, on oath, any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge; and thereupon evidence could have been offered in support of and against his detention; but failing to make such sworn denial or allegation, I must regard the facts stated in the return as true.

They are certainly sufficient to justify the detention of Hoey, and the statute makes it my duty to remand him to the House of Refuge.

Upon the argument, the conviction of Hoey as set forth in the return, was not denied, and in the petition for the writ and upon the argument it was stated on behalf of the prisoner, and admitted by the respondent, that no certificate of this conviction was ever filed in the office of the Clerk of Kings County pursuant to sec. 67, title 3, chap. 2, part 4, R. S., 5th ed., and it was claimed on behalf of the prisoner that he was therefore entitled to his discharge.

It cannot be contended that the filing of this certificate is necessary to the perfection of the judgment. The judgment of the court follows in its sentence immediately after the conviction, and is immediately put in execution by the commitment; while by the statute the certificate need not be filed until twenty days after the conviction; and if it were intended that this should be necessary to perfect the judgment, it would undoubtedly have been provided that no commitment should issue until such certificate should be filed, for it would be manifestly improper to allow a judgment to be put in execution before it was perfected.

The Court of Special Sessions is not a court of record, and in the absence of this statute its judgment would require the same proof as is required of the judgment of other courts not of record. It was, among other things, to avoid the trouble and inconvenience of this method of proof that this provision was made, requiring a certificate

to be filed and allowing it to be evidence of the facts stated therein.

It is not declared that it shall be the only evidence of those facts, nor can it be regarded as anything more than a convenient substitute for the primary or best evidence of them, and such evidence would be received to prove them as well as the certificate.

The omission to file the certificate was a neglect of duty on the part of the magistrate, which, if wilful, would subject him to punishment as for a misdemeanor, but it cannot invalidate the judgment of the Court of Special Sessions held by him.

To hold otherwise would be to determine that a judgment in a criminal case, duly and properly rendered, is to be annulled, and a prisoner undergoing sentence thereon to be discharged, merely because the magistrate who held the court in which such judgment was rendered afterwards neglected a duty, the performance or omission of which could in nowise affect the regularity or justice of the conviction.

NEW YORK SUPERIOR COURT.

THE PEOPLE *ex rel.* ETC.

vs.

OTTO HOYM AND EDWARD HAYMAN.

Special Term, December, 1860.

The Act of April 17, 1860, prohibiting certain exhibitions and plays within the City and County of New York on *Sunday, held to be constitutional* and valid as a lawful exercise of legislative authority. Consequently the defendants, by exhibiting on Sunday a play called "One of our People," or the "Brave Isaac," in the building Nos. 37 and 39 Bowery, known as the "New York Stadt Theater," incurred the penalty prescribed by this act, to wit, were guilty of a misdemeanor, and in addition to the punishment therefor

provided by law became subject to a penalty of $500, with a forfeiture of license.

Opinion per Hoffman, *J.*—See full report, 20 *Howard's Pr. Rep.* 76.

NEW YORK COMMON PLEAS.

IN THE MATTER OF HELEN MILLER; AND ELEVEN OTHER CASES. — *Special Term, October*, 1865.

Exposition of the law in relation to vagrancy, disorderly persons and disorderly conduct in the City of New York; the correct course of procedure under the various statutes in summary convictions and commitments for such offences before police justices pointed out, and the nature and extent of the power that may be exercised in reviewing such cases upon writs of *habeas corpus* and *certiorari*.

Opinion by Daly, *First Judge*—1 *Daly's Reports*, 562.

CITY COURT.—Nov. 8, 1865.

Before Recorder Hoffman.

THE PEOPLE *ex rel.* MARGARET CORNELL *vs.* HOUSE OF REFUGE. — *Commitment to the House of Refuge.*

A writ of *habeas corpus* was issued in this matter returnable before Recorder Hoffman. By the return it appeared that the relator had been convicted of petit larceny and committed to the House of Refuge. The counsel for the relator moved for a discharge on the ground that the commitment was invalid in not stating the time of imprisonment, it only appearing by the commitment that the relator had been sentenced to the House of Refuge, there to

be dealt with according to law. The Recorder, after hearing the counsel for the respondents, dismissed the writ, and delivered the following opinion:

The House of Refuge is a reformatory institution, not a prison. When the Legislature authorized courts to send young persons convicted of crimes to this place, it was with a view to their care and custody during minority, and not with a view of confining them a certain period by way of punishment. An order of the court, therefore, sending to the House of Refuge a young person "to be dealt with according to law" is right and proper.

W. F. HOWE for relator; H. A. CRAM for respondent.

SUPREME COURT.

MATTER OF WILLIAMSON. — *Special Term, June*, 1867.

It is no longer necessary, in order to sustain a commitment upon a conviction in a Court of Special Sessions in the City of New York, that the record of the conviction should be filed in the County Clerk's office.

Per Ingraham, *P. J.*—3 *Abb. Pr. Rep. N. S.* 244.

SUPREME COURT.

THE PEOPLE *ex rel.* THE SOCIETY FOR THE REFORMATION OF JUVENILE DELINQUENTS *vs.* FRANCIS DEGNEN. — *New York General Term, January*, 1869.

It is not necessary that a commitment of a juvenile offender to the House of Refuge should specify the period of imprisonment; for this is fixed by the Statute.

This is an appeal by *certiorari* to review an order made

by Mr. Justice Barbour, of the Superior Court of the City of New York, discharging the respondent Francis Degnen from the custody of the Managers of the House of Refuge on Randall's Island.

The order was made on the return to a writ of *habeas corpus* previously issued by the said Justice and directed to the Superintendent of the House of Refuge, to inquire into the cause of the respondent's detention.

The return to the writ, the truth of which was admitted on the hearing, set forth that the respondent was detained by virtue of a warrant of commitment which was made a part of the return, and from which it appeared that the respondent, on the 13th day of October, 1868, after having been duly convicted of the misdemeanor of petit larceny, by the Court of Special Sessions of the Peace for the City and County of New York, had been sent to the House of Refuge.

The judgment of the court, as set out in the commitment, was as follows: "That the said Francis, for the misdemeanor aforesaid, whereof he is convicted, (*it appearing to the court that he is under the age of sixteen years,*) *be sent to the House of Refuge, there to be dealt with according to law.*"

Mr. Justice Barbour held that the commitment was void for indefiniteness as to the period of imprisonment; that the omission to state such period, and which should have been within the statutory limit of six months, was a fatal defect in the commitment, and that any detention under it was therefore illegal. For these reasons, Mr. Justice Barbour, by an order reciting them and dated November 21, 1868, discharged the respondent from custody.

HENRY A. CRAM, for Relators.

CLERKE, *J.*—It is a mistake to say that the term indicated in the conviction is indefinite so that it gives authority to the House of Refuge to confine the prisoner for an unascertainable period. The words of the conviction itself, indeed, do not specify the precise period; but it refers with sufficient certainty to the authority given by law to this In-

stitution, and that is, in express terms, to retain in its custody male persons until their majority and female persons until the age of 18 years. By this provision the construction of every conviction is governed. Even if there is any ambiguity in the language it should be construed liberally, for the authority given to this Institution is beneficial in its effect on the individual prisoner and on society. In relation to the former, the exercise of the authority amounts to a commutation of the ordinary punishment. Strictly speaking, confinement in the House of Refuge does not partake of the degradation or physical suffering to which persons are subject usually in prisons. Its discipline is reformatory, with the view of saving persons during the susceptibility of tender years from total profligacy, and restoring them to society in a condition no longer dangerous to it.

The order of the Judge should be reversed.

BARNARD, *J.*—The Society for the Reformation of Juvenile Delinquents was incorporated by the Legislature in 1824; power was given to the Managers of the Society "to receive and take into the House of Refuge to be established by them" certain classes of delinquent children, and "to place the said children committed to their care, during the minority of such children, at such useful employments, and to cause them to be instructed in such branches of useful knowledge, as shall be suitable to their years and capacity." An annual report was to be made by the Managers to the Legislature, and to the Corporation of the City of New York, of all the facts and particulars which tended to show the effect, whether advantageous or otherwise, of the association. The Legislature also directed that the act should "be construed, in all courts and places, benignly and favorably for every humane and laudable purpose therein contained." The institution thus created was a charity, and not a prison. Its object was the reformation of children, and not their punishment. The children received by them for this purpose were received during their minority for boys, and not beyond 18

years for girls. In furtherance of this charitable design of reformation, courts by which juvenile offenders were convicted of crime, were empowered, instead of sentencing such person to a State-prison or County Jail, to order "that he be removed to and confined in the House of Refuge established for the reformation of juvenile delinquents in the city of New York." The sentence of the law upon the criminal is not imposed. Instead thereof, he is committed to the care and custody of this charitable Institution during minority to be instructed in useful knowledge. No court can increase the term of detention or shorten it. The act incorporating the Society fixes it once for all. The learned judge fell into an error in discharging the defendant. The order should be reversed, and defendant remanded to the care and custody of the Relators.

SUTHERLAND, *J.*—I concur in the conclusion.

Reported 6 *Abb. Pr. N. S., page* 87—where see also arguments of counsel.

SUPERIOR COURT.

THE PEOPLE *ex rel.* JAMES J. RICE,
against
THE KEEPER OF THE PENITENTIARY OF THE CITY OF NEW YORK.

Special Term, Sept., 1869.

The laws of 1840 (page 73, ch. 100) and the laws of 1856 (page 251, ch. 158), in connection with the Revised Statutes, recognize and authorize imprisonment in three different places for the crime of *grand larceny*, viz., state prison, penitentiary, and house of refuge. Offenders over twenty-one are to be imprisoned in the state prison; those between twenty-one and sixteen in the state prison or penitentiary, at the discretion of the court; those under sixteen in the

state prison or house of refuge, at the discretion of the court.

When the court under its power of discretion has determined the age of the offender, and designated the place of his imprisonment, and passed sentence upon him, the exercise of that discretion and that determination are made the final adjudication of a competent court, and can no more be inquired into on *habeas corpus* than can the guilt or innocence of a prisoner who has either pleaded, or been found by the jury guilty of the offence charged in the indictment.

If error is committed in such determination, it can only be corrected, if at all, by writ of error or a motion for a new trial, when the court has power to entertain such motion.

See full report of above case, and opinion of Jones, *J.*—37 *Howard's Pr. Rep.* 494.

See also to same effect opinion, of Judge Ingraham at Supreme Court, Special Term, March, 1870, in 8 *Abb. Pr. Rep. N. S.* 112, People *ex rel.* McCabe against the Superintendent of the House of Refuge.

NEW YORK SUPERIOR COURT.

PATRICK O'TOOLE,
agst.
THE MANAGERS OF THE SOCIETY FOR THE REFORMATION OF JUVENILE DELINQUENTS IN THE CITY OF NEW YORK.

Special Term, November, 1869.

Before Hon. F. J. FITHIAN, Justice.

The complaint in this action set forth the conviction of the plaintiff of petit larceny, his commitment to the House

of Refuge, his confinement there from 9th March, 1869, to July 20, 1869, when he was discharged, by order of Justice Friedman; and then alleges, that while in the House of Refuge the defendants negligently, carelessly and unlawfully ill-treated the plaintiff in the following respects:

1. In keeping him confined in close, solitary and unhealthy confinement.

2. In not supplying him with enough good and wholesome food.

3. In not removing fleas or bugs from his cell.

4. In not teaching him a particular trade.

5. In not instructing him in the Roman Catholic religion.

6. In not indenturing him to a particular person, one Hackett, a machinist.

7. In not apprenticing him to his father, or discharging him on the application of his father.

In consequence of which various acts of negligence the plaintiff claimed to have suffered in body and mind, and to have incurred damages to the extent of ten thousand dollars.

The defendants *demurred* to the complaint, on the ground that it did not *state facts sufficient to constitute a cause of action.*

Edmund Randolph Robinson, for defendants, in support of demurrer.

I.—The defendants are a body of public officers, who are charged by law with the entire management of the House of Refuge, and the custody, instruction, indenturing and discharge of its inmates; who discharge their duties gratuitously, and who are invested by law with full discretion in the matters intrusted to them.

II.—Being, therefore, public officers exercising a discretion in the discharge of a public duty judicial in its character, cast upon them by law, they are not liable to this action while acting in good faith, without malice, and in their appropriate sphere.

(*a.*) The immunity of judges of Courts of Record for judicial acts—even if corrupt and oppressive—has long been settled.

Yates *vs.* Lansing, 5 John, R. 282, affd. 9 Id. 395.
Pratt *vs.* Gardner, 2 Cush. 68.

(*b.*) The same immunity is extended to *quasi-judicial* officers, *i.e.*, to officers whose powers are not *absolute*, *certain*, and *imperative*, but *discretionary*, to be exerted or withheld, according to their own judgment as to what is necessary and proper. They cannot be held liable civilly for a neglect to exercise those powers, nor for the manner of their exercise, when no corruption or malice is imputed, and when they keep within the scope of their authority. They are spoken of as *quasi-judicial* officers, from the likeness of their discretionary functions to those of a judge who decides controversies between individuals.

Shearman and Redfield on Negligence, § 156, and cases cited.
Bartlett *vs.* Crozier, 17 John, 439.
Wilson *vs.* the Mayor, 1 Den., 599.
Mills *vs.* Brooklyn, 32 N. Y., 489.

(*c.*) Thus, jurors are not responsible to any one for their verdict, or grand jurors for any indictment found by them, or commissioners or registers in bankruptcy, or collectors of customs for their decisions, or a board of supervisors for their determinations, however erroneous and wrongful.

(*d.*) In Wilson *vs.* the Mayor, the same principles were applied to the city of New York.

Where the statute authorizing the corporation of the city of New York to cause sewers, etc., to be built, confers discretionary powers as to time and place of constructing such works, a private action cannot be maintained against the

corporation for an omission to construct a particular improvement of this kind, though the neglect be charged to be wilful.

(*e.*) And in Gould *vs.* Hammond, 1 McAllister's C. Ct. (Cal.) 235, it was held: "Where a discretion is reposed by law in an officer, he is not punishable if damage result to another, unless he exercises the power conferred, in cases not within his jurisdiction, or in a manner not confided to him, or with malice, cruelty, or wilful oppression. His authority is *quasi-judicial.*"

(*f.*) On this ground, among others, it was held that an action would not lie against the trustees of a public school, for dismissing or excluding a pupil.

Stephenson *vs.* Hall, 14 Barb., 222
Spear *vs.* Cumming, 23 Pick., 221.
Donahue *vs.* Richards, 38 Maine, 376.

(*g.*) The case of Williams *vs.* Adams, 3 Allen, (Mass.) is directly in point, in which it was held that a prisoner confined in a house of correction cannot bring an action against the master of the house for negligence in not furnishing sufficient food, clothing, and warmth of room, when there was no evidence of express malice, or evidence to justify the inference of express malice.

(This case is far stronger than the present case, because in it, it appeared there was not only negligence, but also a clear violation of duties imposed by the statute of Massachusetts.)

(*h.*) It is *clear*, then, that the action will not lie unless express malice or corruption be alleged and proved; and of course as express malice and corruption cannot be predicated of a corporation, this exception or limitation does not apply to defendants in their corporate capacity.

III.—This action will not lie because the duties of the defendants are of a *general* public nature—because they act for the profit of the public at large and owe no specific duty to individuals.

(*a.*) They are entirely different from the other class of officers who are appointed to act not for the public in general, but for such individuals as may employ them for a specific fee paid, such as sheriffs, constables, registers of deeds, notaries public, &c., who receive compensation from individuals for the particular services rendered.

Officers of the latter class are clearly liable in damages for any act of negligence or abuse of office, to any individual specially injured thereby.

As to officers of the former class, it is settled that they are not responsible in damages, for mere negligence, and it has been said that an action will not lie even where their conduct is malicious and corrupt—the remedy being by indictment.

(*b.*) This distinction is clearly laid down by the Court of Appeals in Garlinghouse v. Jacobs, 29 N. Y. R. pp. 297–310: and in Judge Sandford's opinion in Hutson v. The Mayor, 6 Sandf., p. 321.

See also Young *vs.* Commissioner of Roads—2 Nott & McCord, 537.
Dunlap *vs.* Knapp, 14 Ohio, p. 64.
Stewart *vs.* Southard, 17 Ohio, p. 402.

To this distinction may be referred the principles settled as far back as Lane v. Cotton (1699), 1 Lord Raymond, 646, that no action lies against a public officer of this class for negligence of one of his subordinates, due care having been taken in his selection; *it being matter of government, and both being servants of one master, the public, and no compensation having been received from the plaintiff.*

IV.—This action cannot be maintained because the defendants have no funds out of which the damages can be

paid, without diverting them from the public purposes to which they have been appropriated by the Legislature.

With respect to their real estate they are expressly forbidden by § 1, Act 1824, "from applying it to any other purposes than those for which the incorporation was formed."

As to their personal property, they derive their income from three sources.

1. The State—annual appropriation.
2. The City—annual appropriation.
3. The annual fund derived from the license-moneys paid by places of amusement in this city.

Under what law or on what principle can these funds be diverted to the payment of a judgment in this action?

If they cannot then this action cannot be maintained.

Bartlett *vs.* Crozier, 17 John, 439.
Holliday *vs.* St. Leonard, Shoreditch, 11 C. B. (N. S.) 192.

V.—There is no precedent to be found for such an action as this, and when facts such as those stated in the complaint are of such common occurrence, the fact that no such action has ever been brought is a strong argument that it will not lie.

VI.—On grounds of the highest public policy such an action should not be maintained.

See Spear *vs.* Cummings, 23 Pick., 227.
Williams *vs.* Adams, 3 Allen, 171.
Russell *vs.* Devon, 2 Term Rep., 667.
And the opinions of Ashhurst, J., and Kenyon, C J. in the last case cited.
Lord Kenyon says:

"If this experiment had succeeded it would have been productive of an infinity of actions; and though the fear of introducing so much litigation ought not to prevent the plaintiff recovering, if by law he is entitled, yet it ought to have considerable weight in a case where it is admitted that

there is no precedent of such an action having been ever before attempted. These considerations are applicable to the present case. They are in some respects much graver and more serious here than existed in the case in which they were applied. The effect of maintaining actions like the present would be to transfer to the supervision of courts of law the question of the proper management of our jails and houses of correction, and require them to pass upon all the alleged abuses arising from neglect by the officers to discharge the functions of their offices properly; and we cannot think that any such relation exists between a prisoner in a house of correction and the keeper thereof, as will authorize a civil action for such neglects of duty as are shown in the present case."

VII.—This unanswerable argument *ab inconvenienti* is applicable in all its force against the maintenance of the present action.

VIII.—The demurrer should be sustained and the complaint dismissed. There can be no amendment, because the difficulty is not in the manner the facts are stated, but that the facts themselves do not constitute a legal cause of action.

John T. Rowland for plaintiff and against the demurrer.

The demurrer was sustained, no written opinion having been delivered; and judgment was afterwards entered on the demurrer in favor of the defendants and against the plaintiff, on the 27th day of November, 1869.

THE SOCIETY FOR THE REFORMATION OF JUVENILE DELINQUENTS

vs.

ALBERT DIERS.

January, 1871.

BRADY, J.—The act of 1839 (Laws 1839, p. 11) provides by the first section that no theatre, circus, or building, garden or grounds, for exhibiting theatrical or equestrian performances in the city of New York, shall be opened for such exhibition, unless the manager or proprietor thereof shall first and annually obtain from the Mayor of the city a license therefor.

It also provides by the same section that the manager or proprietor neglecting to take out such a license before such exhibition, shall be subject to a penalty of five hundred dollars. It also provides by the fourth section for an injunction restraining the opening until the manager or proprietor shall have complied with the requisitions of the act. The act of 1860 (Laws 1860, p. 999) prohibits the exhibition on Sunday to the public in any building, garden, grounds, concert-room, or other room or place within the City and County of New York, of any interlude, tragedy, comedy, opera, ballet, play, farce, negro minstrelsy, negro or other dancing, or any other entertainment of the stage or any part or parts therein, or any equestrian, circus, or dramatic performance, or any performance of jugglers, acrobats, or rope-dancing. It also provides that any person offending against the provisions of the act, and every person aiding in such exhibition, by advertisement or otherwise, and every person, being owner or lessee, who shall lease any of the places named for the purpose of such exhibition or performance, or assent that it shall be used for that purpose, if the same shall be

so used, shall be guilty of a misdemeanor, and, in addition to the punishment provided therefor by law, shall be subjected to a penalty of five hundred dollars; and if the violation be by manager or proprietor, or any other person having a license for the place in which such violation occurs, then the license shall become null and void.

The act of 1862 (Laws 1862, p. 475) provides that it shall not be lawful to exhibit to the public in any building, garden, or grounds, concert-room, or other place or room within the city of New York, any interlude, tragedy, or comedy, opera, ballet, play, farce, negro minstrelsy, negro or other dancing, or other entertainment of the stage, or any part or parts therein, or any equestrian or dramatic performance, or any performance of jugglers or rope-dancing or acrobats, until a license therefor shall have first been had and obtained pursuant to, and at the same rate provided for theatrical performances, in the act of 1839, *supra*. It also provides that every manager or proprietor of any such exhibition or performance who shall neglect to take out the license, or consent to, cause or allow any such exhibition or performance, or any single one of them, without such license, shall incur the penalties and be subjected to the provisions for an injunction provided for in the act of 1839, *supra*. The act also subjects to the same penalty the owner or lessee of any building, or of any of the places mentioned, who shall lease or let the same for the purpose of any such exhibition or performance, or who shall assent that the same be used for any such purpose, unless permitted by a license previously obtained therefor, and then in force; provided, however, that such place shall be so used in accordance with such letting or assent. The act of 1862, when compared with the act of 1839, will be found to be much more comprehensive and sweeping, embracing all kinds of dramatic performances or entertainments of the stage besides those expressly designated, and any part or parts therein.

If the exhibitions, therefore, at the defendant's garden

are included in the terms "opera, farce, interlude, comedy, tragedy, play, ballet," or are in their nature dramatic, or are entertainments of the stage, or any part or parts therein, they are within the prohibition of the statute, and cannot be given without a license. The language employed in the act of 1860 and of 1862 leaves no doubt of the intention of the Legislature in regard to the character of the exhibitions or performances for which licenses are to be procured, or of the places in which such exhibitions or performances being publicly given shall be within the prohibitory design. The defendant is the proprietor of the "National Garten," a public place of resort, and, as appears from the proofs on behalf of the plaintiff, the interior of the building is fitted up for theatrical performances, with a raised stage, orchestra, drop-curtain, side-scenes, foot-lights, and such other arrangements as are usual where theatrical performances are given. It also appears that in August, 1870, and on the 23d day thereof, there was a performance on that stage, by actors dressed in costume adapted to the character of the piece, consisting of a farce in two acts, in the German language, called *Dienstboten Wirthschaft* (Servants' Housekeeping), and on the 19th of August, 1870, a farce in one act, and a comedy in two acts, performed by four actors in the former and six in the latter, all dressed in costume adapted to the character of the pieces. It also appears that for admission to the "Garten" ten cents is charged and was paid.

The defendant in answer to these charges, says that his "Garten" is kept for refreshments for visitors, and for concerts vocal and instrumental, and denies that on the days hereinbefore mentioned there was such a stage or theatrical formance as charged by the plaintiff. He does not deny that the performance on the 23d of August was designated by name as alleged, or that he charges ten cents for admission to his "Garten," nor does he explain the nature of the performances in detail, which he calls concerts vocal and instrumental, otherwise than by referring particularly to one of the affidavits made on his behalf and annexed to his de-

position. It appears by that affidavit that there is, *as usual*, a raised platform; but it is alleged to be in *no sense a regular theatrical stage*, having no foot-lights nor drop-curtain nor scene-shifting; and it is said that while the visitors were enjoying their refreshments on the 23d of August two persons went upon the platform and sang an impromptu piece with occasional impromptu dialogue; but it is averred that the exhibition was in no sense a theatrical one, and that it was not a written farce. It is stated, however, that the song and dialogue were for the amusement of the persons present; those persons, it must be borne in mind, having paid ten cents for the privilege of entering the "Garten" and enjoying its entertainments. In that affidavit it is also said that the performance given on the 29th of August, "wrongly called a farce"—in one act with four actors, and a comedy in two acts with six actors in costume—was simply solos, duets and other songs given impromptu and relating to the last battle between the Prussians and French at Weissenburg.

It is not denied, be it observed, however, that these actors were dressed in costume appropriate to the piece. It is not stated either that these actors were not in the employment of the defendant. Assuming that the artists who thus appeared have the gift of impromptu song, duet, dialogue, and histrionic representation sufficient with the limited number of six, to portray the battle at Weissenburg between the French and Germans, the performance was nevertheless in its character dramatic or theatrical.

The raised stage or platform, the song, duet, dialogue and costumes are not the occurrences of private life, impromptu or otherwise, except occasionally, when to beguile the weary hours, or in the better effort to aid some noble charity, amateurs don the glittering robes of the noble or the simpler attire of the gentry or peasantry, and assist, to some extent at least, to show that indeed "all the world's a stage, and all the men and women merely players;" and the exhibitions thus given are not continuous, but isolated, and

not in any sense public in public places, as suggested by the counsel for the defendant. They are the exceptions, not the rule.

If we seek for the definition of the words of the statute, we find that a play is a "dramatic composition," "a drama," "tragedy," "comedy," or "farce," "a composition in which characters are represented by dialogue and action."

We find also that an interlude is "a short dramatic piece, and generally accompanied with music," though usually represented or performed between the acts of longer performances; and that a farce is "a short dramatic entertainment in which ludicrous qualities are greatly exaggerated for the purpose of exciting laughter," "a short play of low, comic character." (*Vide* Worcester's Dictionary.)

It is not essential to the creation of any one of these defined compositions that it should be written. It may be impromptu and be an interlude or farce, the details having been agreed upon and each actor left to his own capacity to make it harmonious or ludicrous. It is enough, under the broad provisions of the statute referred to, that the result of the combination is a theatrical entertainment. It must also be said that songs and duets sung by persons in costume may be parts of dramatic, theatrical, or operatic entertainment, and must be so regarded when connected with dialogue and sung in a public garden for admission to which a charge is made. Upon the defendant's case, therefore, taken in connection with averments made by the plaintiffs and not denied, it is clear that the exhibitions or performances at his place are within the prohibitions contained in the statute, and that he is not justified in giving them without the license thereto which he is required to obtain.

On the argument of this motion objection was taken to affidavits which the plaintiffs claimed the right to read in answer to those presented on the part of the defendant.

It was then suggested by the Court that the affidavits might be read in reference to any new matter set up in the

papers submitted on the part of the defendant. The assertion that the performance was impromptu is new matter. It is coupled with a denial that the exhibition complained of was, as alleged, a farce or comedy, and is therefore explanatory, or in the nature of a confession and avoidance.

The answering papers of the plaintiffs are therefore to be considered. From these it appears that the defendant, in one of the proceedings against him by the plaintiffs, signed a paper and described himself as a theatrical manager. It also appears that on the occasion of the 23d of August, as a substitute for programmes, there was a bulletin board arranged on the wall of the defendant's premises, on which was written, announcing the performance, "*Zum Schluss—Dienstboten Wirthschaft*," "Finale—Servants' Housekeeping," a fact which affects the probability of the exhibition being impromptu and justifies a conclusion to the contrary. And it appears in reference to the play of the 29th of August that actresses participated in the performance, and that in one of the compositions but two songs were sung.

Other facts and circumstances appear to which I make no reference, inasmuch as they may not be responsive to the new matter urged as relevant and important for the defendant. It is quite apparent from these facts and circumstances, that the defendant must, if he designs to continue his business in the mode heretofore conducted, seek a license.

The Legislature has said that it must be done, and as the law affects all equally there is no reason why all should not be required to bear its burdens. It is not by these statutes intended to interfere with the theatrical amusements of the people, but to exercise a salutary supervision of them, and to compel the persons who thus cater for the public pleasure in public places and for their own aggrandizement to pay for the privilege the license fee; the penalties that may be recovered for violations of the law being appropriated for the benefit of the plaintiffs' Institution, which is regarded as one of great usefulness.

I have set out more at length than was necessary, per-

haps, the statutes bearing upon the question discussed; but the subject is important, and others should understand that public exhibitions of a theatrical, operatic, dramatic or equestrian character cannot be given in this city, in any place opened for that purpose without a license therefor, as long as the statutes referred to remain unrepealed.

It is only necessary to say further, that the existence of another action for a violation of the statute of 1860, *supra*, by giving a performance on Sunday, has no bearing upon the plaintiffs' right to an injunction herein. The cause of action in that case is wholly independent of that on which this action is predicated.

For these reasons, the motion to dissolve the injunction must be denied.

Ordered accordingly.

CRAM & ROBINSON,
Attorneys for Plaintiffs.

C. C. EGAN,
Attorney for Defendant.

SUPREME COURT.

IN THE MATTER
OF
MARY MILLER.

New York
Special Term,
Sept. 27, 1872.

LEONARD, Justice.

The petitioner was committed by a Police Justice to the House of Refuge last March as a vagrant: viz., wandering about at all hours of day and night, and without any visible means of support.

She was so committed, after conviction on competent evidence, as is stated in the warrant of commitment.

She is now brought up on *habeas corpus*, accompanied by a return on *certiorari* of the record of the trial and conviction before the police magistrate.

This record states that the conviction was upon the proofs and examination of the said Mary; but there appears to be no examination of said Mary reduced to writing and returned with the record under the *certiorari*. It is urged among other matters that the judge before whom the proceeding is now pending, having granted the *certiorari*, must examine the record of the conviction to ascertain if the conviction is sustained by the evidence, and whether the proceedings are regular; and if the conviction or record be found to be erroneous or irregular, that the petitioner must be discharged.

This is manifestly an unfounded claim.

It is provided by the Rev. Stat., vol. 3, p. 888 (5th Ed.) § 57, that no court or officer, on the return of any *habeas corpus* or *certiorari* shall have power to inquire into the legality or justice of any proofs, judgment, decree or execution specified in the preceding 22d section.

That section (§ 36, 5th Ed.) declares that persons (subd. 2) 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 shall not be entitled to prosecute the writ of *habeas corpus* or *certiorari*.

I think these sections make it clear that I cannot examine or decide upon the question whether the magistrate committed an error in the trial or conviction of the prisoner.

The process of commitment is regular.

The statute forbids that the judge before whom the writs of *habeas corpus* or *certiorari* are heard should inquire into the legality or justice of such final judgment, or of an execution issued on such judgment.

The girl is detained by execution issued upon a final judgment of a criminal court.

She has been committed to a reformatory institution by reason of her tender years. She had become a vagrant from the neglect or incapacity of her natural guardians.

How can it be assumed that they can any better provide for her in the future.

There is nothing indicating that it is not best for the girl to remain until she has reached, at least, such years as will enable her to earn an honest living.

The law provides for her discharge at that period.

The writ of *habeas corpus* is discharged and the prisoner remanded.