Farmers' & C. Bank, 25 N. Y. 293; *Butts* v. *Wood*, 37 N. Y. 317; *Ogden* v. *Murray*, 39 N. Y. 202; *Coleman* v. *Second Av. R. Co.* 38 N. Y. 201; *Hoyle* v. *Plattsburgh & M. R. Co.* 54 N. Y. 329; *Blake* v. *Buffalo C. R. Co.* 56 N. Y. 485; *U. S. Rolling Stock Co.* v. *Atlantic & G. W. R. Co.* 34 Ohio St. 450; *Robinson* v. *Smith*, 3 Paige, 222; *McAleer* v. *Murray*, 58 Pa. St. 126; *West St. L. Sav. Bank* v. *Shawnee Co. Bank*, 95 U. S. 557; *Stark Bank* v. *U. S. Pottery Co.* 34 Vt. 144; *Cook* v. *Berlin Wool M. Co.* 43 Wis. 433.—[ED.

Ex parte ALEXANDER.

(*District Court, N. D. New York.* 1883.)

HABEAS CORPUS—REVIEW ON.

The circuit court cannot on *habeas corpus* look behind the record to review the proceedings of a court of co-ordinate jurisdiction

Habeas Corpus.

The defendant was indicted by a grand jury of the United States district court for the western district of Tennessee, on the twenty-seventh day of April, 1882, for receiving illegal pension fees on the first day of April, 1881. Subsequently he was found guilty, and sentenced to one year's imprisonment in the Erie county, New York, penitentiary. The case now comes before the court on writ of *habeas corpus*. In his petition for discharge the prisoner alleges that the offense for which he was sentenced was committed on the fifth or sixth day of February, when there was no law making it a crime, and not on the first day of April, as charged in the indictment.

Zenas M. Swift, for the prisoner.

Martin I. Townsend, Dist. Atty., for the United States.

COXE, D. J. The indictment charges the offense to have been committed on the first day of April, 1881, at a time when, it is conceded, section 5485 of the Revised Statutes was in force. The district court of Tennessee had jurisdiction. The jury found the facts as charged in the second count of the indictment. There is no irregularity appearing on the face of the record. This court cannot, on *habeas corpus*, look behind the record to review the proceedings of a court of co-ordinate jurisdiction, nor can it receive and act on extrinsic evidence. If the prisoner at the trial could have established the facts stated in his affidavit, they might have constituted a defense; but they cannot be considered here. If errors were committed on the trial, the law suggests a very different method of correcting them.

Discharge refused, and prisoner remanded.

UNITED STATES *v.* ROSE.

(*District Court, S. D. New York.* December 21, 1882.)

PENALTY—ACTION FOR—MODE OF PROCEDURE—SUMMONS, INDORSEMENT OF.

Actions for penalties brought in the name of the United States correspond with those brought by the state in the name of "The People of the State of New York;" and by section 914, U. S. Rev St., the provisions of the New York Code of Procedure, in regard to such actions by "The people," etc., are applicable to similar actions brought here in the name of "The United States," and the summons served must therefore be indorsed with a general reference to the statute by which the action for the penalty is given. This indorsement is part of the process; and, being designed to give immediate notice of the nature of the action, is a material part; and, if omitted, is not amendable, and the service of the summons should be set aside.

Motion to Set Aside Service of a Summons.

The action was for a penalty, alleged to have been incurred by the defendant under the provisions of section 4504, U. S. Rev. St. The summons was served without the complaint. The copy of the summons, which was delivered to the defendant, was not indorsed with any reference to the statute by which the penalty was given, as required by the New York Code of Civil Procedure, §§ 1897, 1964, and 1962. The *præcipe* to the clerk, upon which the summons was issued, contained only a pencil indorsement, "R. S. 4504." Defendant's attorneys appeared, reserving the right to move to set aside the summons; and, upon the complaint being served, made this motion.

William C. Wallace, Asst. U. S. Atty., for plaintiff.

Goodrich, Deady & Platt, for defendant.

BROWN, D. J. Actions for penalties brought in the name of "The United States" correspond entirely with those brought by the state in the name of "The People," etc. Each represents the sovereignty which is plaintiff. Hence, when congress adopts (section 914, Rev. St.) the "forms and modes of proceeding" of the several states, an action by "The United States," brought in the state of New York, must be in the form and mode prescribed in this state for similar actions by "The People," etc.; and therefore a reference to the statute and penalty was required to be indorsed on the summons in this action, as prescribed by sections 1897, 1964, and 1962 of the New York Code of Procedure. These sections required an indorsement "upon the copy of the summons delivered in the following form: According to the provisions of, etc., adding such a description of the statute as will identify it with convenient certainty, and also specifying the section," etc.