

INDEX.

	PAGE
Notice of Appeal (Case 1).....	1
Grounds of Appeal (Case 1).....	2
Notice of Appeal (Case 2).....	6
Grounds of Appeal (Case 2).....	7
Decision	10
Defendant's Request to Find (Case 1).....	16
Defendant's Request to Find (Case 2).....	20
Summons (Case 1).....	23
Complaint (Case 1).....	24
Answer (Case 1).....	27
Reply (Case 1).....	31
Notice to Settle (Case 1).....	34
Judge's Findings (Case 1).....	35
Judgment (Case 1).....	42
Summons (Case 2).....	43
Complaint (Case 2).....	44
Answer (Case 2).....	48
Reply (Case 2).....	51
Judge's Findings (Case 2).....	54
Judgment (Case 2).....	60
Statement by Counsel.....	63

TESTIMONY.

For Plaintiff—

Wm. Bramley:

Direct 78

Emil Nothacker:

Direct 79

Cross 87

Redirect 89

	PAGE
Paul D. Chase:	
Direct	91
Cross	96
John Handwerk:	
Direct	102
Cross	104
Redirect	108
Samuel McIlrieth:	
Direct	142
Cross	150
Redirect	162
For Defendant:	
John D. Hesse:	
Direct	110
Daniel Hermann:	
Direct	114-167
Cross	121-174
Redirect	128
Recross	129
Thomas Farrell:	
Direct	130
Cross	131
August Edelman:	
Direct	131
Cross	132
Harold Ziedlich:	
Direct	133
Cross	134
Adolph Rominger:	
Direct	135
Jacob Heinz:	
Direct	136
Cross	137
Exhibits	141

CASE NO. 1.

Notice of Appeal.

New Jersey Supreme Court.

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JOHN HANDWERK, et als., Plaintiffs, vs. THE TOWN OF GUTTENBERG IN THE COUNTY OF HUDSON, Defendant.	Action No. 1. Action at Law. Notice of Appeal.
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To J. EMIL WALSCHEID, Esq.,
Attorney of Plaintiffs.

20

Sir:

TAKE NOTICE, that the defendant appeals from
the whole of the judgment entered in this cause to
the Court of Errors and Appeals.

Dated, November 24, 1917.

Yours truly,

30

WARREN DIXON,
Attorney of Defendant.

40

CASE NO. 1.

Grounds of Appeal.

NEW JERSEY SUPREME COURT.

10

JOHN HANDWERK, et als.,
Plaintiffs,

vs.

THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,
Defendant.On Appeal
Grounds of
Appeal.

20

To J. EMIL WALSCHEID, Esq.,
Attorney of Plaintiffs.

Sir:

TAKE NOTICE, that the following are the grounds of appeal stated by the defendant, upon which it bases its notice of appeal, and on which it will claim reversal of judgment in the above cause, to wit:

30

1. That the trial court refused to find that the resolution of the Town of Guttenberg, passed at the meeting held December 1st, 1913, which resolution reads as follows: "Resolved that all special police officers' badges be and are hereby recalled, and all appointments of special officers be, and are hereby revoked, from and after December 31, 1913," did effect a revocation of all special police powers theretofore conferred under the Charter of Guttenberg upon Town or ordinance officers, after the 31st day of December, 1913.

40

2. That the trial court refused to find that the resolution passed by the Town Council at its meeting held on January 1st, 1914, which resolution

Case No. 1—Grounds of Appeal.

reads as follows: "Resolved that the following subordinate officers, or agents be and are hereby appointed for the ensuing year at the salary set opposite their names, to be paid in equal semi-monthly installments at the middle and end of each month: John Handwerk, \$800 per year; Stephen Bostwick, \$780 per year; John Buckley, \$780 per year; Peter Handwerk, \$780 per year; Wm. Tallmann, \$780 per year; George J. Bell, \$780 per year," was rescinded and nullified by the resolution of the Board of Councilmen passed at the meeting held on January 5th, 1914, which resolutions reads as follows: "Resolved that Charles Rademacher and Christopher Barth be and are hereby appointed special ordinance officers and agents without pay, their duties to consist of the enforcement of ordinances and such other duties as the Town Charter provides; and be it further resolved that all special officers' badges with the exception of the two just issued be and are hereby recalled," and that by virtue of said last mentioned resolution, any and all powers conferred by the first resolution upon all the parties therein mentioned except Rademacher and Barth, were revoked.

3. That the trial court refused to find that plaintiffs failed to prove any services rendered or what services, if any, were rendered between January 1st, 1914, and the 5th day of January, 1914.

4. That the trial court refused to find that all services which the plaintiffs may have performed for the Town of Guttenberg after January 5th,

Case No. 1—Grounds of Appeal.

1914, were performed by them without any legal authority from the town to so act.

10 5. That the trial court refused to find that the plaintiffs had failed to prove any services rendered to the Town under legal authority upon which this suit is based, from January 5th, 1914, to May 1st, 1914, and that they had failed to prove the value of any services rendered to the Town as police officers between such dates.

20 6. That the trial court erroneously found that the plaintiffs performed police service for the Town between January 1, 1914, and May 1, 1914, by virtue of the resolution passed by the Council on January 1, 1914, rather than under the ordinance.

30 7. That the trial court refused to find that whatever services were performed by plaintiffs were done in violation of the writ of certiorari issued by the Supreme Court to review the ordinance of December 1, 1913.

8. That the trial court erroneously found that from May 1, 1914, forward to the 18th day of January, 1915, the seven men appointed respectively captain, sergeant and patrolmen under the day and night police, performed their duties under the ordinance as amended, and no other police services were rendered to the Town.

40 9. That the trial court refused to find, as to plaintiff Christopher Barth (who sues for serv-

Case No. 1—Grounds of Appeal.

ices as a subordinate officer) that whatever services were performed by said Barth, were performed under the resolution passed at the meeting held on January 5, 1914, and were performed and to be performed "without pay."

10

10. That the trial court refused to find that said plaintiff Barth cannot recover compensation for such services so performed under said resolution.

11. That the trial court refused to enter a judgment of non-suit against all of said plaintiffs, or any of them.

12. That the trial court refused to find judgment in favor of said defendant and against all of said plaintiffs, or any of them.

20

Dated, Dec. 11, 1917.

WARREN DIXON,
Attorney of Appellant.

30

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CASE NO. 22-151-000

Notice of Appeal.

NEW JERSEY SUPREME COURT.

10

JOHN HANDWERK, et als.,
Plaintiffs,

vs.

THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,
Defendant.Action No. 2.
Action at
Law. Notice
of Appeal.

20

To J. EMIL WALSCHEID, Esq.,
Attorney of Plaintiffs.

Sir:

TAKE NOTICE, that the defendant appeals from
the whole of the judgment entered in this cause to
the Court of Errors and Appeals.

Dated, November 24, 1917.

30

Yours truly,
WARREN DIXON,
Attorney of Defendant.

40

CASE NO. 2.

Grounds of Appeal.

NEW JERSEY SUPREME COURT.

JOHN HANDWERK, et als., Plaintiffs, vs. THE TOWN OF GUTTENBERG IN THE COUNTY OF HUDSON, Defendant.	10 Action No. 2. On Appeal. Grounds of Appeal.
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To J. EMIL WALSCHEID, Esq.,
Attorney of Plaintiffs.

20

Sir:

TAKE NOTICE, that the following are the grounds of appeal stated by the defendant upon which it bases its notice of appeal and on which it will claim reversal of judgment in the above cause, to wit:

30

1. That the trial court erroneously refused to find that no services were performed by the plaintiffs from May 1, 1914, to December 1, 1914.

2. That the trial court erroneously refused to find that plaintiffs had no right to perform and defendant had no right to accept the services of plaintiffs as police officers appointed under the ordinance, during the pendency of the writ of certiorari in the suit of Hermann and Lutz vs. Guttenberg, as the writ of certiorari operated as a

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Case No. 2—Grounds of Appeal.

stay of all proceedings under said ordinance, during the pendency of said suit.

10 3. That the trial court erroneously refused to find that such suit under the writ of certiorari was pending in the Supreme Court from prior to Janpary 1, 1914, to April 24, 1914, and in the Court of Appeals from May 6, 1914, to the November term, 1914, of the Court of Errors and Appeals.

20 4. That the trial court erroneously refused to find that the resignation of plaintiffs as subordinate officers, which was submitted to the Council and by the Council accepted at the meeting held December 1, 1914, was effective as a resignation as such subordinate officers only from the date of acceptance, to wit: December 1, 1914, and cannot legally relate back as of May 1, 1914, for the purpose of permitting plaintiffs to sue for and recover salary as police officers after May 1, 1914.

30 5. That the trial court erroneously refused to find that the plaintiffs can recover for salary as police officers in this case only such salary as accrued after December 1, 1914, until January 18, 1915, if any services as such were in fact performed by plaintiffs between those dates.

6. That the trial court erroneously refused to find that the plaintiffs failed to prove the performance of any services as police officers, for which recovery can be had in this suit, between December 1, 1914, and January 19, 1915.

40 7. That the trial court erroneously refused to find that there was no appropriation of money for

Case No. 1—Grounds of Appeal.

payment of police salaries for the year 1914, from which plaintiffs could be paid.

8. That the trial court erroneously refused to find that there was no appropriation of money made for the payment of police salaries for the year 1915, from which plaintiffs could be paid. 10

9. That the trial court erroneously refused to order a judgment of non-suit entered against the plaintiffs or any of them.

10. That the trial court erroneously refused to order a judgment entered in favor of the defendant and against the plaintiffs, or any of them.

11. That the trial court erroneously refused to find, as to the plaintiff, Christopher Barth (who sues for services as a police officer from May 1, 1914, to January 19, 1915) that such services as were performed by said Barth from May 1, 1914, to December 1, 1914, were performed under his appointment as an ordinance officer, under the resolution passed on January 5, 1914, and were "without pay." 20

12. That the trial court erroneously refused to find that said Barth failed to prove performance of services as a police officer under the ordinance between the dates of December 1, 1914, and January 19, 1915. 30

Dated, December 11, 1917.

WARREN DIXON,
Attorney of Appellant.

Decision.

NEW JERSEY SUPREME COURT.

JOHN HANDWERK, et als.,

VS.

TOWN OF GUTTENBERG.

Decision.

J. EMIL WALSCHEID, Esq., for Plaintiffs.

WARREN DIXON, Esq., for Defendant.

WILLIAM H. SPEER, Circuit Judge:

10
20 These are two cases and are tried before me by consent without a jury. The statement of facts as they exist in these cases, and as I find them, is well stated in the brief of plaintiff's attorney, and is as follows:

30 Prior to December, 1913, the Town of Guttenberg had no day and night police. Police duty was done by officers appointed from year to year under Section 15 of the Guttenberg charter hereinafter referred to. On December 1st, 1913, the town, pursuant to the powers conferred by an act hereafter quoted, adopted an ordinance entitled "An ordinance to establish, regulate and control a day and night police, and to regulate and define the manner of their appointment and removal, their duties and compensation." This ordinance created a regular department and defined the manner of appointment and removal of the members thereof, their duties and compensation. It was amended by "An ordinance to amend 'An ordinance to establish, regulate and control a day and night police, to regulate and define the man-

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Decision.

ner of their appointment and removal, their duties and compensation,' passed and approved December 1st, 1913." This amendatory ordinance amended the compensation to be paid to officers and the age limit as fixed by the original ordinance to make these provisions comply with statutory requirements.

10

The ordinance as amended provided for a captain of police at an annual salary of one thousand dollars; a sergeant of police at an annual salary of nine hundred dollars; and five patrolmen each at an annual salary of eight hundred and forty dollars.

(There is an error in Section 1 of the original ordinance as printed in Exhibit P-1 in that it reads in line 3 of this section, "It shall consist of patrolmen and two officers," instead of, "It shall consist of five patrolmen and two officers.")

20

At the meeting of the Board of Council held on the 19th day of December, 1913, John Handwerk was appointed captain of said day and night police; John Buckley was appointed sergeant of said day and night police, and Peter Handwerk, Christopher Barth, William Tallmann, Stephen Bostwick and George Bell were each appointed patrolmen of said day and night police. (See Exhibit P-1, page 13).

30

These men immediately qualified by subscribing to an oath of office which was forthwith filed with the clerk of the town. These oaths of office are set forth in detail upon pages 14, 15, 16 and 17 of Exhibit P-1. They were filed on the 19th day of December, 1913. On December 20th, 1913, a writ of certiorari was allowed (Exhibit P-1, page 1)

40

Decision.

removing to the Supreme Court for review said ordinance thus amended. This writ suspended the operation of the ordinance until the Supreme Court passed upon the validity of the same.

- 10 All of the police badges which had been issued prior to the adoption of the ordinance creating the day and night police under the old charter provision, were called in upon the adoption of the police ordinance. (See testimony taken on last day of hearing and resolution therein set forth, adopted December 15th, 1913). Besides, the terms of office of all of these appointees would and did expire on the first day of January, 1914, when the
- 20 Board of Council elected in the fall of 1913 came into power. The allowance of the writ of certiorari therefore left the town without police protection at the beginning of the year 1915. In order to meet this condition, Council, on January 1st, 1914, went back to the practice in vogue before the adoption of the police ordinance and adopted a resolution appointing six subordinate officers and agents under Section 15 of the town
- 30 charter to give to the town such police protection as that section and the wearing of uniforms might provide. The six men thus appointed were six of the seven men who were appointed under the ordinance creating a day and night police. Christopher Barth, who was appointed under the ordinance, was not thus appointed. The term of office of these subordinate officers and agents by the resolution of appointment was fixed as one
- 40 year. The salary of each is less than that provided in the ordinance creating a day and night

Decision.

police for the position to which they were there-
under respectively appointed. The men appoint-
ed as subordinate officers and agents immediately
took oaths of office which were filed with the town
clerk, and thereafter they patrolled the streets of
the town as subordinate officers and agents until
May 1st, 1914, after the decision by the Supreme
Court in certiorari had been handed down.

16

No police service of any kind was rendered be-
tween January 1st and May 1st, 1914, in the town,
except as rendered by the said six individuals as
ordinance officers.

From May 1st, 1914, forward to the 18th day
of January, 1915, the *seven* men appointed re-
spectively captain, sergeant and patrolmen under
the day and night police performed their duties
under the ordinance as amended, creating the
day and night police of the Town of Guttenberg
and no other police services were rendered in the
town. On January 18th, 1915, this ordinance was
repealed and the positions of captain, sergeant
and patrolmen of the day and night police were
thereby abolished. (See Buckley vs. Guttenberg,
87 N. J. L., 434).

20

30

For the services rendered by these six individ-
uals as subordinate officers and agents and by
the seven individuals as members of the day and
night police of the Town of Guttenberg, no pay-
ment whatever has been made by the town. The
six subordinate officers and agents from time to
time presented their claims for payment in ac-
cordance with the compensation provided in the
resolution of their appointment, and these claims

40

Decision.

were always passed and approved of by the Board of Council as presented; they covered the period between January 1st and May 1st, 1914.

10 The seven individuals appointed as members of the day and night police from time to time submitted to the Town Council sworn claims for services rendered by them between May 1st, 1914, and January 18th, 1915, and all claims thus presented up to January 1st, 1915, were also passed and approved of by Town Council. Claims presented for the two weeks in January, 1915, were not approved of by Town Council.

20 The claims approved of by Town Council were not paid because the Mayor of the town appointed under an act entitled "An Act to provide for the election in incorporated towns of this State of a councilman at large to be called mayor, and to regulate his duties and terms of office" (P. L., 1907, page 121; 4 C. S., 5426, Section 36), had power to sign the pay warrants and refused to do so. As a result, the six individuals appointed as ordinance officers have instituted suit to recover salary due them as ordinance officers from January 1st to May 1st, 1914, and the seven individuals appointed members of the day and night police have instituted suit to recover their salaries for services rendered under their appointments as members of the day and night police from the first day of May, 1914, to the 18th day of January, 1915.

40 The writ of certiorari was argued April 4th, 1914, before Mr. Justice Swayze, who advised judgment for the defendant. (Exhibit P-1 page

Decision.

111). Upon this decision a rule for judgment dismissing the certiorari was entered April 24th, 1914 (Exhibit P-1, page IV). From this judgment prosecutors appealed May 6th, 1914 (Exhibit P-1, page 1), and the Court of Errors on November 16th, 1914, affirmed the judgment below for the reasons given by Mr. Justice Swayze in the Supreme Court (86 N. J. L., 681).

10

The cases thus instituted have been tried together by the court without a jury.

On these facts I am constrained to find and order judgment in favor of plaintiffs, in both suits, for the full amount in each case, with interest to be computed upon their monthly salary installments.

20

It would serve no useful purpose for me to enter into a discussion, which would necessarily have to be very extensive, of the legal grounds upon which my decision in these cases is rested. The points made by defendant's attorney are very fully and satisfactorily answered by the very able brief of plaintiff's attorney and the cases supporting his contentions are there collected and have, I presume, not escaped the notice of defendant's attorney in his very thorough conduct of the cause on behalf of his client.

30

Except as the foregoing statement of facts conforms thereto I refuse to make the findings requested in the written requests of defendant's attorney, appended hereto.

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CASE No. 1.

Defendant's Request to Find.

NEW JERSEY SUPREME COURT.

10	JOHN HANDWERK, et als., Plaintiffs, vs. THE TOWN OF GUTTENBERG IN THE COUNTY OF HUDSON, Defendant.	}	Case No. 1. Request for Finding.
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(Suit for salary as ordinance officers.)

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Defendant requests the Court to make the following findings, to wit:

1. That the resolution of the Town of Guttenberg passed at the meeting held December 1, 1913, which resolution reads as follows:

30

“Resolved that all special police officers’ badges be, and are hereby recalled, and all appointment of special officers be, and are hereby revoked from and after December 31, 1913.”

did effect a revocation of all special police powers theretofore conferred under the charter of Guttenberg upon Town or ordinance officers, after the 31st day of December, 1913.

40

2. That the resolution passed by the Town Council at the meeting held on January 1, 1914, which resolution reads as follows:

Case No. 1—Defendant's Request to Find.

“Resolved that the following subordinate officers, or agents be and are hereby appointed for the ensuing year at the salary set opposite their names, to be paid in equal semi-monthly installments at the middle and end of each month: 10

John Handwerk,	\$800 per year,
Stephen Bostwick,	\$780 per year,
John Buckley,	\$780 per year,
Peter Handwerk,	\$780 per year,
Wm. Tallmann,	\$780 per year,
George J. Bell	\$780. per year.”

was rescinded and nullified by the resolution of the Board of Councilmen passed at the meeting held on January 5th, 1914, which resolution reads as follows: 20

“Resolved, that Charles Rademacher and Christopher Barth be and are hereby appointed special ordinance officers and agents without pay, their duties to consist of the enforcement of ordinances and such other duties as the Town charter provides, and be it further resolved that all special officers' badges with the exception of the two just issued be and are hereby recalled.” 30

3. That plaintiffs failed to prove any services rendered or what services if any, were rendered between the First day of January, Nineteen 40

Case No. 1—Defendant's Request to Find.

Hundred and Fourteen, and the Fifth day of January, Nineteen Hundred and Fourteen.

10 4. That all services which plaintiffs may have performed in the way of police duties for the Town of Guttenberg after January 5, 1914, were performed by them without any legal authority from the Town to so act.

20 5. That plaintiffs failed to prove any services rendered to the Town under legal authority upon which this suit is based from January 5, 1914, to May 1, 1914, and have failed to prove the value of any services rendered to the Town as police officers between such dates.

6. That plaintiffs should be non-suited, or

7. That judgment should be entered in favor of defendant.

30 As to Plaintiff CHRISTOPHER BARTH (who sues for services as a subordinate officer).

1. Whatever services were performed by said Barth, were performed under the resolution passed at the meeting held on January 5, 1914, and were performed and to be performed "without pay".

40

Decision.

2. He cannot recover compensation for such services so performed under said resolution.

3. Judgment of non-suit should be entered against him, or

10

4. Judgment should be entered in favor of the defendant.

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CASE No. 2.

Defendant's Requests to Find.

NEW JERSEY SUPREME COURT.

10	JOHN HANDWERK, JOHN BUCKLEY, et als, Plaintiffs, vs. TOWN OF GUTTENBERG, Defendant.	Case No. 2. Requests for Find- ing.
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(Suit for salary as police officers from May 1, 1914, to January 18, 1915, under appointment under ordinance.)

20 Defendant requests the Court to make the following findings, to wit:

1. That no services were performed by said plaintiffs from May 1, 1914, to December 1, 1914.

30 2. That plaintiffs had no right to perform and defendant had no right to accept the services of plaintiffs as police officers appointed under the ordinance during the pendency of the writ of certiorari in the suit of Hermann & Lutz vs. Guttenberg as the writ of certiorari operated as a stay of all proceedings under said ordinance during the pendency of said suit.

40 3. That said suit under the writ of certiorari was pending in the Supreme Court from prior to January 1, 1914, to April 24, 1914 (see State of Case, Page 5), and in the Court of Appeals from May 6, 1914, to the November term, 1914, of the Court of Errors and Appeals.

Case No. 1—Defendant's Request to Find.

4. That the resignation of plaintiffs as subordinate officers which was submitted to the Council and by the Council accepted at the meeting held December 1, 1914, was effective as a resignation as such subordinate officers only from the date of acceptance, to wit, December 1, 1914, and cannot legally relate back as of May 1, 1914, for the purpose of permitting plaintiffs to sue for and recover salary as police officers after May 1, 1914. 10

5. That plaintiffs can recover for salary as police officers in this case only such salary as accrued after December 1, 1914, to January 18, 1915, if any services as such were in fact performed by plaintiffs between those dates. 20

6. Plaintiffs failed to prove the performance of any services as police officers, for which recovery can be had in this suit, between December 1, 1914, and January 19, 1915.

7. That there was no appropriation of money for the payment of police salaries for the year 1914 from which plaintiffs could be paid. 30

8. That there was no appropriation of money made for the payment of police salaries for the year 1915 from which plaintiffs could be paid.

9. That judgment of non-suit should be entered against plaintiffs, or 40

Case No. 1—Defendant's Request to Find.

10. That judgment should be entered in favor of defendant.

10 As to plaintiff CHRISTOPHER BARTH (who
sues for services as a police officer from
May 1, 1914, to January 19, 1915).

1. That such services as were performed by
said Barth from May 1, 1914, to December 1,
1914, were performed under his appointment
as an ordinance officer under the resolution
passed on January 5, 1914.

20 2. That said Barth failed to prove performance
of services as a police officer under the ordi-
nance between the dates of December 1, 1914,
and January 19, 1915.

3. That judgment of non-suit should be en-
tered against him, or

30 4. That judgment should be entered in favor
of defendant.

WARREN DIXON,
Defendant's Attorney.

CASE No. 1.

Summons.

NEW JERSEY, ss.:

THE STATE OF NEW JERSEY

10

to

THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,

You are summoned to answer the annexed complaint of John Handwerk, Stephen Bostwick, John Buckley, Peter Handwerk, William Tallmann and George J. Bell in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court at Trenton within twenty days after service upon you of this writ and the annexed complaint, the plaintiffs may proceed in the suit and judgment may be entered against you.

20

Witness: William S. Gummere, Esquire, Chief Justice of the Supreme Court at Trenton, this 21st day of August, A. D., 1915.

30

WILLIAM C. GEBHARDT,
Clerk.

J. EMIL WALSCHEID,
Attorney.

40

CASE No. 1

Complaint.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

10

JOHN HANDWERK, STEPHEN BOST-
WICK, JOHN BUCKLEY, PETER
HANDWERK, WILLIAM TALLMANN
AND GEORGE J. BELL,

Plaintiffs,

vs.

THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,

20

Defendant.

} action at Law.
Complaint.

The plaintiffs, all of whom reside in the Town of Guttenberg, in the County of Hudson and State of New Jersey, say that:

30 1. The Town of Guttenberg in the County of Hudson is a municipal corporation of the State of New Jersey, incorporated by an act of the Legislature of the said State entitled "An act to incorporate the Town of Guttenberg in the County of Hudson", approved March 9th, 1859, and the various supplements thereto and amendments thereof.

40 2. At a meeting of the Board of Councilmen of the Town of Guttenberg held on the first day of January, A. D. 1914, said Board of Councilmen, pursuant to the powers upon them conferred by the act of the legislature heretofore by title referred to, did pass and adopt the fol-

Case No. 1—Complaint.

lowing resolution: "Resolved that the following subordinate officers or agents be and are hereby appointed for the ensuing year at the salary set opposite their names, to be paid in equal semi-monthly installments at the middle and end of each month: 10

John Handwerk	\$800 per year,
Stephen Bostwick	\$780 per year
John Buckley	\$780 per year
Peter Handwerk	\$780 per year
William Tallmann	\$780 per year
George J. Bell	\$780 per year"

and in and by said resolution did appoint the plaintiffs subordinate officers and agents of the Town of Guttenberg under the act aforesaid. 20

3. The plaintiffs, immediately after the passage and adoption of said resolution, each swore to an oath of office which was thereupon filed with the clerk of said town and entered upon the performance of their respective duties as subordinate officers and agents of the Town of Guttenberg in the County of Hudson and performed all of the duties of subordinate officers and agents of said town from the first day of January, 1914, up to the first day of May, 1914. 30

4. By reason of the appointments aforesaid and the services rendered as aforesaid, there became due and owing to the plaintiff, John Handwerk, from the Town of Guttenberg in the County of Hudson for the period aforesaid, the sum of 40

Case No. 1—Complaint.

Two Hundred Sixty-six and 67/100 (\$266.67) Dollars and there also became due and owing to each of the remaining plaintiffs from the Town of Guttenberg in the County of Hudson for the period aforesaid, the sum of Two Hundred and
 10 Sixty (\$260.00) Dollars.

5. Subsequent to the first day of May, 1914, the plaintiffs did each preent to the Board of Councilmen of the Town of Guttenberg in the County of Hudson, a bill or claim covering the services thus rendered by each of them from the first day of January, 1914, to the first day of May 1914, which bill or claim was in each instance
 20 sworn to and subscribed by the claimant therein mentioned

6. The Town of Guttenberg in the County of Hudson has not paid any of said claims.

Plaintiff, John Handwerk, demands damages in the sum of Two Hundred and Sixty-six and 67/100 (\$266.67) Dollars, together with lawful
 30 interest thereon from the first day of May, 1914, and costs of suit. Each of the remaining plaintiffs, to wit, Stephen Bostwick, John Buckley, Peter Handwerk, William Tallmann and George J. Bell, demand damages in the sum of Two Hundred and Sixty (\$260.00) Dollars, together with lawful interest thereon from the first day of May, 1914, and costs of suit. Plaintiffs pray that a writ of mandamus may issue against de-
 40 fendant to compel the payment of such judgments as they may recover.

J. EMIL WALSCHEID,
 Attorney for Plaintiffs.

CASE No. 1.

Answer.

NEW JERSEY SUPREME COURT.

JOHN HANDWERK, STEPHEN BOST-
WICK, et al,

Plaintiffs,

vs.

THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,

Defendant.

Action at
Law.
Answer.

10

Defendant says that:

1. It admits the first paragraph.

2. It admits that as stated in the second paragraph it did pass and adopt the resolution therein recited, but denies that the same was passed pursuant to powers conferred upon the said Board of Councilmen under the act referred to in said paragraph.

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3. It denies the third paragraph except that it has no knowledge as to whether each swore to an oath of office which was thereupon filed with the Clerk of said Town immediately after the passage and adoption of the said resolution.

4. It denies the fourth paragraph.

40

5. It admits that the said plaintiffs did present to the Board of Councilmen bills or claims covering services alleged to be rendered from the first day of January, 1914, to the first day of May, 1914, but denies that said services were rendered.

6. It admits the sixth paragraph.

Answer.

SECOND DEFENSE.

10 1. On the first day of December, 1913, defendant passed and adopted an ordinance entitled "An ordinance to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensation", which ordinance was amended by an ordinance entitled "An ordinance to amend 'An ordinance to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensation' ", passed and approved December 1st, 20 1913, the amending ordinance being in turn passed and approved on December 15th, 1913. Said ordinance thus amended provided for the appointment of a captain of police, a sergeant of police and five patrolmen to hold their offices during good behavior; the captain of police to receive a salary of \$1,000 per annum, the sergeant of police to receive a salary of \$900 per 30 annum, and each of the patrolmen to receive a salary of \$840 per annum.

2. At a meeting of the Board of Councilmen of the Town of Guttenberg held December 19, 1913, plaintiff, John Handwerk, was appointed captain of police under said ordinance; plaintiff, John Buckley, was appointed sergeant of police under said ordinance, and plaintiffs, Peter Handwerk, William Tallmann, Stephen Bostwick and 40 George J. Bell, were appointed patrolmen by the Board of Councilmen.

Answer.

3. Each of said plaintiffs accepted said appointment.

4. Said ordinance was in effect in said Town until repealed in the early part of January, 1915.

10

5. Whatever police services rendered to said Town by said plaintiffs were rendered under and by virtue of their appointment to said several positions under the said ordinance.

6. Said ordinance was passed and adopted by said Town under and by virtue of the legislative power conferred by Chapter 213 of the Laws of 1884, page 326 &c.

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7. At, prior and subsequent to the passage of said ordinance and the appointment of said plaintiffs thereunder no appropriations for the support of the police department were made or raised by the qualified voters of said Town by vote at the annual town meeting, charter or municipal election as provided for in section six of said act.

30

8. At and during the time of the alleged performance of said services by the plaintiffs and prior thereto no moneys were appropriated by said Town for such purpose, nor have any such moneys been appropriated for such purposes since the time of the alleged performance of the said services.

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Answer.

THIRD DEFENSE.

10 1. At the time of the commencement of this
suit there was and still is pending and undeter-
mined in the Supreme Court of this State a suit
instituted by said plaintiffs against the said de-
fendant, and against its Mayor, Town Clerk, and
Town Treasurer, in mandamus, wherein the said
plaintiffs, as relators, seek to compel the said
defendant to pay the alleged salaries for alleged
services rendered and which are the same ser-
vices for which recovery is sought in this
suit.

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WARREN DIXON,
Attorney for Defendant.

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CASE No. 1.

Reply.

NEW JERSEY SUPREME COURT.

JOHN HANDWERK, STEPHEN BOST-
WICK, et als.,

Plaintiffs,

vs.

THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,

Defendant.

Case No. 1
Action at
Law.
Reply.**10**

Plaintiffs, replying to the answer of the defendant, say that:

Reply to second defense:

1. Plaintiffs admit the first paragraph.
2. Plaintiffs admit the second paragraph.
3. Plaintiffs admit the third paragraph.

30

4. Plaintiffs deny the fourth paragraph and say that said ordinance was not in effect in the Town of Guttenberg in the County of Hudson between the first day of January, 1915, and the first day of May, A. D., 1915.

5. Plaintiffs deny the fifth paragraph.

6. Plaintiffs admit the sixth paragraph.

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7. Plaintiffs have not sufficient knowledge as to the facts alleged in the seventh paragraph either to admit or deny the same.

Case No. 1—Reply.

8. Plaintiffs deny the eighth paragraph.

10 9. Plaintiffs will object that the second defense to the complaint discloses no defense to the causes of action set up by the plaintiffs, because:

(a) The services rendered by them and for which this suit is instituted were not rendered under any appointment appointing them or any of them police officers under the ordinance aforesaid.

20 (b) The qualified voters of the Town of Guttenberg are not required, called upon or empowered, under the laws of the State, by vote, at the annual town meeting or at any other meeting or election to provide for, raise or appropriate moneys for the support of the Police Department of the town.

30 (c) Plaintiffs cannot be stopped from maintaining their said causes of action by reason of the failure of the qualified voters of the Town of Guttenberg to raise moneys for the support of the Police Department of the town.

40 (d) Plaintiffs cannot be stopped from maintaining their said causes of action by reason of the failure of the defendant to appropriate moneys for the purpose of paying for the services rendered by these plaintiffs and for which this suit is instituted.

Case No. 1—Reply.

REPLY TO THIRD DEFENSE.

1. Plaintiffs deny the allegations of the third defense.

2. Plaintiffs will object that the allegations of the fourth defense disclose no defense to the causes of action set up by the plaintiffs because the allowance of a writ of mandamus against individual officials of the Town of Guttenberg in the County of Hudson to compel them to perform ministerial duties does not constitute a bar to, or an abatement of, the right of the plaintiffs to maintain the causes of action set out in the complaint.

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J. EMIL WALSCHEID,
Attorney for Plaintiffs.

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Case No. 1—Reply—Notice.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

10

JOHN HANDWERK, et als.,
Plaintiffs,

VS.

THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,
Defendant.

Action No. 1.

Action at
Law.
Notice.

20 Sir:

PLEASE TAKE NOTICE that I shall, on Friday,
the 28th day of September, A. D. 1917, at the
hour of ten o'clock in the forenoon of that day
or as soon thereafter as counsel can be heard
in the premises, at the Court House in the City
of Jersey City, apply to Honorable William H.
Speer, Circuit Court Judge, to settle the findings
of fact and form of postea in the above entitled
cause, and that at the time and place aforesaid
I will present as the findings of fact and form
of postea in the above entitled cause, the annexed
findings of fact and postea.

30

Very truly yours,

J. EMIL WALSCHEID,
Attorney for Plaintiffs.

40

Dated, September 25th, 1917.

To WARREN DIXON, Esq.,

Attorney for Defendant.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

JOHN HANDWERK et als.,
Plaintiffs,
vs.
THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,
Defendant.

Action No. 1.
Action at
Law.

20

FINDINGS OF FACT AND POSTEA.

This case was tried before William H. Speer without a jury, with the consent of the parties thereto, at the Hudson Circuit on the 10th day of December, 1915.

After hearing the evidence and the counsel for plaintiffs and for defendant, the court finds the facts in issue to be as follows:

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1. Prior to December, 1913, the Town of Guttenberg had no day and night police. Police duty was done by officers appointed from year to year, under Section 15 of the act entitled "An act to incorporate the Town of Guttenberg in the County of Hudson," approved March 9th, 1859 (Chapter 78, Laws of 1859, p. 199), which provides "that the said corporation (the Town of Guttenberg) shall have power to appoint such number of subordinate officers and agents as they may deem proper to enforce all such ordinances as they may

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Case No. 1—Judge's Findings.

10 be authorized by this act to pass, which officers shall have power to arrest all persons violating any of the ordinances of this corporation and to bring them before someone of the Councilmen who may proceed in a summary manner to hear and determine said charge."

20 2. On December 1st, 1913, the Town of Guttenberg in the County of Hudson, pursuant to the powers conferred by an act entitled "An act concerning incorporated towns in this State and certain officers thereof" (P. L. 1884, p. 326; 4 C. S. 5415), adopted "An ordinance to establish, regulate and control a day and night police and to regulate and define the manner of their appointment and removal, their duties and compensation." This ordinance created a police department and defined the manner of appointment and removal of the members thereof, their duties and compensation. It was amended by "An ordinance to amend 'An ordinance to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensation,'

30 passed and approved December 1st, 1913."

3. This ordinance as amended provided for a captain of police at an annual salary of \$1,000.00, a sergeant of police at an annual salary of \$900.00, and five patrolmen at an annual salary of \$840.00.

40 4. At a meeting of the Board of Council of the Town of Guttenberg in the County of Hudson held on the 19th day of December, 1913, the plaintiff, John Handwerk, was appointed captain of said day and night police; the plaintiff, John

Case No. 1—Judge's Findings.

Buckley, was appointed sergeant of said day and night police; and the plaintiffs, Peter Handwerk, William Tallmann, Stephen Bostwick and George Bell, together with one Christopher Barth, were each appointed patrolmen of said day and night police.

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5. The individuals thus appointed to the day and night police under said ordinance each immediately qualified by subscribing to an oath of office which was filed with the Clerk of the Town of Guttenberg in the County of Hudson on the 19th day of December, 1913.

6. On December 20th, 1913, a writ of certiorari was allowed removing to the Supreme Court for review the ordinance creating the police department of the Town of Guttenberg as amended.

20

7. The writ of certiorari thus allowed was argued April 4th, 1914, before Mr. Justice Swayze at chambers. He advised judgment for the defendants therein, namely, for the Town of Guttenberg in the County of Hudson and for the members of the day and night police hereinbefore enumerated appointed pursuant to the provisions of said ordinance.

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8. Upon this decision thus rendered, a rule for judgment dismissing the certiorari was entered in the minutes of the Supreme Court of the State of New Jersey on April 24th, 1914.

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9. From the rule for judgment thus entered,

Case No. 1—Judge's Findings.

the prosecutors of said writ appealed to the Court of Errors and Appeals of the State of New Jersey on the 6th day of May, 1914, and said court on November 16th, 1914, affirmed the judgment rendered by the Supreme Court therein.

10

10. The men who prior to December 1st, 1913, had performed duty for the Town of Guttenberg in the County of Hudson as subordinate officers and agents, wore police badges and uniforms. All of the police badges which had been issued by the Town of Guttenberg in the County of Hudson prior to the adoption of the ordinance creating the day and night police were recalled by the Board of Council of the Town of Guttenberg in the County of Hudson upon the adoption of said police ordinance and the terms of office of all appointees under section 15 of the Act of 1859 hereinbefore set out expired on the 1st day of January, 1914.

20

11. The allowance of the writ of certiorari on December 20th, 1913, suspended the operation of ordinance creating the day and night police until the Supreme Court had passed upon the validity of the same and left the Town of Guttenberg in the County of Hudson without any police protection whatever, beginning with the first day of January, 1914.

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12. In order to meet this condition the Board of Council of the Town of Guttenberg in the County of Hudson on January 1st, 1914, went back to the practice in vogue before the adoption of the police ordinance aforesaid and adopted a resolution appointing six subordinate officers and agents under section 15 of the Act of 1859 hereinbefore quoted

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Case No. 1—Judge's Findings.

for the purpose of giving to the Town such police protection as that section and the wearing of uniforms might provide.

13. The resolution thus adopted reads as follows:

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“Resolved, that the following subordinate officers and agents be and are hereby appointed for the ensuing year at the salary set opposite their names, to be paid in equal semi-monthly installments at the middle and end of each month:

John Handwerk	\$800 per year,
Stephen Bostwick	\$780 per year,
John Buckley	\$780 per year,
Peter Handwerk	\$780 per year,
William Tallmann	\$780 per year,
George J. Bell	\$780 per year.”

20

14. The six men thus appointed were six of the seven men who were appointed members of the day and night police of the Town of Guttenberg under the ordinance creating the day and night police. One Christopher Barth who was appointed a member of the day and night police under the ordinance was not appointed a subordinate officer and agent.

30

15. The plaintiffs in this case thus appointed as subordinate officers and agents immediately took oaths of office which were filed with the Town Clerk of the Town of Guttenberg in the County of Hudson on January 1st, 1914, and thereafter patrolled the streets of the Town of Guttenberg

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Case No. 1—Judge's Findings.

in the County of Hudson as subordinate officers and agents of the Town of Guttenberg in the County of Hudson until the 1st day of May, 1914.

10 16. No police service of any kind was rendered between January 1st and May 1st, 1914, in the Town of Guttenberg in the County of Hudson, except as rendered by the six plaintiffs to this suit as subordinate officers and agents of the town.

17. For the services thus rendered by the plaintiffs to this suit as subordinate officers and agents, no payment has been made by the Town of Guttenberg in the County of Hudson.

20

18. The plaintiffs in this case as subordinate officers and agents of the town from time to time presented their claims for payment for the services thus rendered by them in accordance with the compensation provided in the resolution of their appointment, and these claims were all passed and approved for payment by the Board of Council of the Town of Guttenberg in the County of Hudson. They covered the period between January 1st, and May 1st, 1914.

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19. The claims thus presented by said plaintiffs and approved by the Board of Council of the Town of Guttenberg were not paid because the Mayor of the Town, appointed under the act entitled "An act to provide for the election in incorporated towns of this state of a councilman at large to be called mayor, and to regulate his duties and terms of office" (P. L., 1907, p. 121; 4 C. S., 5426,

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Case No. 1—Judge's Findings.

section 36) had the power to sign the claims, pay warrants, vouchers or checks of said plaintiffs, but refused to do so.

20. The plaintiff, John Handwerk, thereby sustained damages to the amount of \$266.64 for the services by him rendered as a subordinate officer and agent of the Town of Guttenberg in the County of Hudson from the 1st day of January, 1914, to the first day of May, 1914, together with interest upon said sum to be computed upon monthly installments of \$66.66 or the sum of \$57.33. 10

21. The plaintiffs, John Buckley, Peter Handwerk, William Tallmann, Stephen Bostwick and George Bell each thereby sustained damages to the amount of \$260.00 for the services by them severally rendered as subordinate officers and agents of the Town of Guttenberg in the County of Hudson from the 1st day of January, 1914, to the 1st day of May, 1914, together with interest upon said sum to be computed upon monthly installments of \$65.00, or the sum of \$55.90. 20

The court finds in favor of plaintiff, John Handwerk, and against the defendant, in the sum of \$323.97. 30

The court finds in favor of each of the plaintiffs, John Buckley, Peter Handwerk, William Tallmann, Stephen Bostwick and George Bell, and against the defendant in the sum of \$315.90 or a total for said five plaintiffs of \$1,579.50 and a total judgment against said defendants of \$1,903.47. 40

WM. H. SPEER,
Judge.

CASE NO. 1.

Judgment.

NEW JERSEY SUPREME COURT.

10 JOHN HANDWERK, STEPHEN BOST-
WICK, JOHN BUCKLEY, PETER
HANDWERK, WILLIAM TALLMANN
AND GEORGE J. BELL,

VS.

TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON.

Action at
Law.
On Postea.

20 It is ordered that judgment be and hereby is
entered against the defendant and in favor of the
plaintiff, John Handwerk, for the sum of three
hundred and twenty-three dollars, and ninety-
seven cents, and in favor of the plaintiff John
Buckley, for the sum of three hundred and fifteen
dollars and ninety cents, and in favor of the plain-
tiff Peter Handwerk, for the sum of three hundred
and fifteen dollars and ninety cents, and in favor
30 of the plaintiff William Tallmann, for the sum of
three hundred and fifteen dollars and ninety cents,
and in favor of the plaintiff Stephen Bostwick,
for the sum of three hundred and fifteen dollars
and ninety cents, and in favor of the plaintiff,
George J. Bell, for the sum of three hundred and
fifteen dollars and ninety cents besides costs to
be taxed nisi.

Entered October 25, 1917.

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On motion of

J. EMIL WALSCHEID, Attorney.

A True Copy.

WM. C. GEBHARDT, Clerk.

CASE NO. 2.

Summons.

NEW JERSEY, SS.: THE STATE OF NEW JERSEY
 to
 THE TOWN OF GUTTENBERG,
 IN THE COUNTY OF HUDSON:

You are summoned to answer the annexed complaint of John Handwerk, John Buckley, Peter Handwerk, Christopher Barth, William Tallman and George Bell in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court at Trenton within twenty days after service upon you of this writ and the annexed complaint, the plaintiffs may proceed in the suit and judgment may be entered against you.

Witness: William S. Gummere, Esquire, Chief Justice of the Supreme Court at Trenton, this 21st day of August, A. D. 1915.

WILLIAM C. GEBHARDT, Clerk. 30
J. EMIL WALSCHEID,
Attorney.

CASE NO. 2.

Complaint.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

10

JOHN HANDWERK, STEPHEN BOST-
WICK, JOHN BUCKLEY, PETER
HANDWERK, WILLIAM TALLMANN
AND GEORGE J. BELL,

Plaintiffs.

vs.

20

THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,

Defendant.

Action at
Law.
Complaint.

The plaintiffs, all of whom reside in the Town of Guttenberg in the County of Hudson and State of New Jersey, say that:

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1. The Town of Guttenberg in the County of Hudson, on the first day of December, 1913, passed and adopted an ordinance entitled "An ordinance to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensation," which ordinance of said town was amended by an ordinance entitled "An ordinance to amend 'An ordinance to establish, regulate and control a day and night police, to regulate and define the manner of

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Case No. 2—Complaint.

their appointment and removal, their duties and compensation,' ' passed and approved December 1st, 1913, the amending ordinance being in turn passed and approved on the 15th day of December, 1913. Said ordinance thus amended provided for the appointment of a Captain of Police, a Sergeant of Police, and five patrolmen, to hold their offices during good behavior; the Captain of Police to receive a salary of One Thousand (\$1,000.00) Dollars per annum, the Sergeant of Police to receive a salary of Nine Hundred (\$900.00) Dollars per annum, and each of the patrolmen to receive a salary of Eight Hundred and Forty (\$840.00) Dollars per annum, which salaries shall be paid pursuant to the terms of said ordinance in equal semi-monthly installments.

2. At a meeting of the Board of Councilmen of the Town of Guttenberg in the County of Hudson held on the 19th day of December, A. D. 1913, plaintiff, John Handwerk, was appointed by said Board of Councilmen, captain of the day and night police of the Town of Guttenberg in the County of Hudson; plaintiff, John Buckley, was appointed sergeant of the day and night police of the Town of Guttenberg in the County of Hudson, and the plaintiffs, Peter Handwerk, Christopher Barth, William Tallmann, Stephen Bostwick and George J. Bell were each appointed patrolmen of the day and night police of the Town of Guttenberg in the County of Hudson, under the terms of the ordinances aforesaid.

Case No. 2—Complaint.

10 3. On the 19th day of December, A. D. 1914, each of the plaintiffs, namely John Handwerk, John Buckley, Peter Handwerk, Christopher Barth, William Tallmann, Stephen Bostwick and George Bell, did subscribe and swear to an oath of office which was thereupon filed with the Clerk of the Town of Guttenberg in the County of Hudson in and by which they did each solemnly promise and swear faithfully, impartially and justly to perform all of the duties of the offices to which they had then been appointed, pursuant to the terms of the ordinances aforesaid.

20 4. From the 1st day of May, 1914, to and inclusive of the 18th day of January, 1915, all of the plaintiffs above named, performed all of the duties of their respective offices in the day and night police aforesaid, whereby the Town of Guttenberg in the County of Hudson became indebted unto the plaintiff, John Handwerk, in the sum of Seven Hundred Eight and 33/100 (\$708.33)
30 Dollars; unto the plaintiff, John Buckley, in the sum of Six Hundred Thirty-seven and 50/100 (\$637.50) Dollars; and unto each of the plaintiffs, Peter Handwerk, Christopher Barth, William Tallmann, Stephen Bostwick and George J. Bell in the sum of Five Hundred and Ninety-five (\$595.00) Dollars. Each of the plaintiffs has presented to the Board of Councilmen of the Town of Guttenberg in the County of Hud-
40 son bills or claims sworn to by each of them for the amounts thus due and owing unto each of them.

Case No. 2—Complaint.

5. The Town of Guttenberg in the County of Hudson has failed, neglected and refused to pay said claims.

Plaintiff, John Handwerk, demands damages in the sum of Seven Hundred Eight and 33/100 (\$708.33) Dollars plaintiff, John Buckley, demands damages in the sum of Six Hundred Thirty-seven and 50/100 (\$637.50) Dollars; and the plaintiffs, Peter Handwerk, Christopher Barth, William Tallmann, Stephen Bostwick and George J. Bell each demand damages in the sum of Five Hundred and Ninety-five (\$595.00) Dollars, together with lawful interest thereon from the 18th day of January, A. D. 1915 and costs of suit. Plaintiffs pray that a writ of mandamus may issue against defendant to compel the payments of such judgments as they may recover.

J. EMIL WALSCHEID,
Attorney for Plaintiffs.

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CASE NO. 2.

Answer.

NEW JERSEY SUPREME COURT.

10	JOHN HANDWERK, STEPHEN BOST- WICK, JOHN BUCKLEY, PETER HANDWERK, WILLIAM TALLMANN AND GEORGE J. BELL,	Action at Law. Answer.
	Plaintiffs,	
	vs.	
	THE TOWN OF GUTTENBERG IN THE COUNTY OF HUDSON,	
	Defendant.	

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Defendant says that:

1. It admits the first paragraph.
2. It admits the second paragraph.
3. It has not sufficient knowledge as to the facts alleged in the third paragraph to either admit or deny the same.
4. It denies the allegations in the fourth paragraph, except that it admits that each of said plaintiffs has presented to the Board of Councilmen of the Town of Guttenberg in the County of Hudson bills or claims sworn to by each of them for various amounts claimed to be due and owing to each of them for services pretended to have been rendered.
5. It admits the fifth paragraph.

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Answers.

SECOND DEFENSE.

1. The ordinance recited and set forth in paragraph one in the complaint was passed and adopted by defendant under and by virtue of an act of the legislature entitled "An act concerning incorporated towns in this state and certain officers thereof," being Chapter 213 of the laws of 1884 on page 326 &c.

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2. That neither before nor after the passage of said ordinance above recited, did the qualified voters of the Town of Guttenberg raise in the years 1913, 1914 or 1915, by vote at the annual town meeting a charter or municipal election, any sum or sums of money deemed expedient for the support of the police department as required by section 6 of said act of 1884, page 330.

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THIRD DEFENSE.

1. Neither at the time of the appointment of said plaintiffs, as recited in the second paragraph of the complaint, nor at any time thereafter during the period of the alleged performance of services by the plaintiffs, was there appropriated or was there subject to appropriation any moneys for the purpose of paying such salaries as provided for in said ordinance.

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Answers.

FOURTH DEFENSE.

10 1. At the time of the commencement of this suit there was pending and still is pending and undetermined in the Supreme Court of this State a suit instituted by said plaintiffs against the said defendant and against its Mayor, Town Clerk, and Town Treasurer, in mandamus, wherein the said plaintiffs as relators seek to compel the said defendant to pay the alleged salaries for alleged services rendered and which are the same services to recover compensation for which this suit was brought.

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WARREN DIXON,
Defendant's Attorney.

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CASE NO. 2.

Reply.

NEW JERSEY SUPREME COURT.

JOHN HANDWERK, JOHN BUCKLEY,
et als.,
Plaintiffs,
vs.
THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,
Defendant.

Case No. 2.
Action at
Law.
Reply.

10

Plaintiffs, replying to the answer of the defendant, say that:

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REPLY TO SECOND DEFENSE.

1. They admit the first paragraph.

2. They have not sufficient knowledge of the facts alleged in the second paragraph either to admit or deny the same.

30

3. Plaintiffs will object that the facts set forth in the second defense disclose no defense to the cause of action set up by the plaintiffs, because:

(a) The qualified voters of the Town of Guttenberg are not required, called upon or empowered, under the laws of the State, by vote at any town or other meeting, to raise money for the support of the Police Department of the town or for any other purpose.

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Case No. 2—Reply.

10 (b) Plaintiffs cannot be stopped from maintaining their said cause of action by reason of the failure of the qualified voters of the Town of Guttenberg to raise moneys for the support of the Police Department of the town.

REPLY TO THIRD DEFENSE.

1. Plaintiffs deny the allegations of the third defense.

20 2. Plaintiffs will object that the allegations of the third defense disclose no defense to the causes of action set up by the plaintiffs, by reason of the failure of the Town of Guttenberg either to appropriate or to have subject to appropriation moneys for the purpose of paying salaries as provided in said ordinance.

REPLY TO FOURTH DEFENSE.

30 1. Plaintiffs deny the allegations of the fourth defense.

40 2. Plaintiffs will object that the allegations of the fourth defense disclose no defense to the causes of action set up by the plaintiffs because the allowance of a writ of mandamus against individual officials of the Town of Guttenberg in the County of Hudson to compel them to perform ministerial duties does not constitute a bar to, or an abatement of the right of the plaintiffs to maintain the causes of action set out in the complaint.

J. EMIL WALSCHEID,
Attorney for Plaintiffs.

Case No. 2—Reply.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

JOHN HANDWERK, et als.,
 Plaintiffs,
 vs.
 THE TOWN OF GUTTENBERG IN THE
 COUNTY OF HUDSON,
 Defendant.

Action No. 2.
 Action at
 Law.
 Notice.

10

Sir:

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PLEASE TAKE NOTICE, that I shall, on Friday,
 the 28th day of September, A. D. 1917, at the
 hour of ten o'clock in the forenoon of that day,
 or as soon thereafter as counsel can be heard in
 the premises, at the Court House in the City of
 Jersey City, apply to Honorable William H.
 Speer, Circuit Court Judge, to settle the findings
 of fact and form of postea in the above entitled
 cause, and that at the time and place aforesaid
 I will present as the findings of fact and form
 of postea in the above entitled cause, the annexed
 findings of fact and postea.

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Very truly yours,

J. EMIL WALSCHEID,
 Attorney for Plaintiffs.

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Dated, Sept. 25th, 1917.
 To WARREN DIXON, Esq.,
 Attorney for Defendant.

CASE NO. 2.

Judge's Findings.NEW JERSEY SUPREME COURT,
HUDSON COUNTY CIRCUIT.

10

JOHN HANDWERK, et als.,
Plaintiffs,
vs.
THE TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,
Defendant.

Action
No. 2.
Action at
Law.

20

FINDINGS OF FACT AND POSTEA.

This case was tried before William H. Speer without a jury with the consent of the parties thereto at the Hudson Circuit on the 10th day of December, 1915.

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After hearing the evidence and counsel for plaintiffs and for defendant, the court finds the facts in issue to be as follows:

40

1. On December 1st, 1913, the town of Guttenberg, pursuant to the powers conferred by an act entitled "An act concerning incorporated towns in this state and certain officers thereof", P. L. 1884, p. 326; 4 C. S. 5415, adopted "An ordinance to establish, regulate and control a day and night police and to regulate and define the manner of their appointment and removal, their duties and compensation." This ordinance created a Police Department and de-

Case No. 2—Judge's Findings.

fined the manner of appointment and removal of the members thereof, their duties and compensation. It was amended by "An ordinance to amend 'An ordinance to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensation', passed and approved December 1st, 1913." 10

2. The ordinance as amended provided for a captain of police at an annual salary of \$1,000; a sergeant of police at an annual salary of \$900; and five patrolmen each at an annual salary of \$840. 20

3. At a meeting of the Board of Council of the Town of Guttenberg in the County of Hudson held on the 19th day of December, 1913, the plaintiff, John Handwerk, was appointed captain of said day and night police; the plaintiff, John Buckley was appointed sergeant of said day and night police; and the plaintiffs, Peter Handwerk, Christopher Barth, William Tallmann, Stephen Bostwick and George Bell were each appointed patrolmen of said day and night police. 30

4. Plaintiffs immediately qualified by subscribing to an oath of office which was filed with the Clerk of the Town of Guttenberg in the County of Hudson on the 19th day of December, 1913.

5. On December 20th, 1913, a writ of certiorari was allowed removing to the Supreme Court for review said ordinance thus amended. 40

Case No. 2—Judge's Findings.

10 6. The writ of certiorari thus allowed was argued April 4th, 1914, before Mr. Justice Swayze at chambers, who advised judgment for the defendants therein, namely for the Town of Guttenberg in the County of Hudson, and the plaintiffs to this suit.

7. Upon this decision thus rendered a rule for judgment dismissing the certiorari was entered in the minutes of the Supreme Court of the State of New Jersey on April 24th, 1914.

20 8. From the rule for judgment thus entered the prosecutors of said writ appealed to the Court of Errors and Appeals of the State of New Jersey on the 6th day of May, 1914, and said court on November 16th, 1914, affirmed the judgment rendered by the Supreme Court therein.

30 9. On January 18th, 1915, the ordinance as amended and hereinbefore referred to was repealed by the Board of Council of the Town of Guttenberg in the County of Hudson and the positions of captain, sergeant and patrolmen of the day and night police were thereby abolished.

40 1. From May 1st, 1914, to the 18th day of January, 1915, the plaintiffs herein appointed respectively captain, sergeant and patrolmen upon the day and night police force of the Town of Guttenberg in the County of Hudson performed their respective duties as police officers of the Town of Guttenberg in the County of Hudson aforesaid under the said ordinance as amend-

Case No. 2—Judge's Findings.

ed, creating the day and night police of the Town of Guttenberg in the County of Hudson, and no other police services were rendered to or for said town by any other persons during the period aforesaid.

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11. The plaintiffs herein, for the services thus rendered by them as police officers of said town, from time to time submitted to the Town Council of said town sworn claims for the services rendered by them between the said 1st day of May, 1914, and the said 18th day of January, 1915, and all claims thus presented to said Board of Council of said town up to the first day of January, 1915, were passed and approved for payment by the Board of Council of the Town of Guttenberg in the County of Hudson. Claims thus presented for the two weeks in January, 1915, were not thus approved by the said Board of Council of the said town.

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12. None of the claims thus presented to the said Board of Council of said town were paid by said town. The claims approved by the Board of Council of the said town were not paid because the mayor of the town appointed under an act entitled "An act to provide for the election in incorporated towns of this state, a councilman at large to be called mayor, and to regulate his duties and terms of office" (P. L. 1907, p. 121; 4 C. S. 5426, sec. 36) had power to sign warrants or orders for the payment of claims allowed and approved by the Board of

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Case No. 2—Judge's Findings.

Council of the Town of Guttenberg for payment and because he refused to sign any of said warrants or orders for the payment of the claims of the plaintiffs to this suit.

10 13. The plaintiff, John Handwerk, thereby sustained damages to the amount of \$708.31 for the services by him rendered as captain of the police of the Town of Guttenberg from the 1st day of May, 1914, to the 18th day of January, 1915, together with interest upon said sum, to be computed upon monthly installments of \$83.33, or the sum of \$135.41.

20 14. The plaintiff, John Buckley, thereby sustained damages to the principal amount of \$647.50 for the services by him rendered as sergeant of the police of the Town of Guttenberg from the 1st day of May, 1914, to the 18th day of January, 1915, together with interest upon said sum to be computed upon monthly installments of \$75.00 or the sum of \$123.68.

30 15. The plaintiffs, Peter Handwerk, Christopher Barth, William Tallman, Stephen Bostwick and George Bell each sustained damages to the amount of \$695.00 for the services by them rendered as patrolmen of the police of the Town of Guttenberg from the 1st day of May, 1914, to the 18th day of January, 1915, together with interest upon said sum to be computed upon monthly installments of \$70.00 or the sum of \$112.75.

40 The court finds for the plaintiffs and against the defendant for the following sums of money, namely:

Case No. 2—Judge's Findings.

For the plaintiff, John Handwerk, the sum of \$823.73.

For the plaintiff, John Buckley, the sum of \$771.26.

For each of the plaintiffs, Peter Handwerk, Christopher Barth, William Tallmann, Stephen Bostwick and George J. Bell, the sum of \$707.75, making a total for said five plaintiffs of \$3,538.75 and a total judgment against said defendant of \$5,153.74. 10

WILLIAM H. SPEER,
Judge.

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CASE NO. 2.

Judgment.

NEW JERSEY SUPREME COURT.

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JOHN HANDWERK, JOHN BUCKLEY,
 PETER HANDWERK, CHRISTOPHER
 BARTH, WILLIAM TALLMAN,
 GEORGE J. BELL AND STEPHEN
 BOSTWICK,

VS.

TOWN OF GUTTENBERG IN THE
 COUNTY OF HUDSON,

Action at
 Law.
 On Postea.

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It is ordered that judgment be and hereby is
 entered against the defendant and in favor of
 the plaintiff, John Handwerk, for the sum of
 eight hundred and forty-three dollars and sev-
 enty-three cents, and in favor of the plaintiff,
 John Buckley, for the sum of seven hundred and
 seventy-one dollars and twenty-six cents, and in
 favor of the plaintiff, Peter Handwerk, for the
 sum of seven hundred and seven dollars and
 seventy-five cents; and in favor of the plaintiff,
 Christopher Barth, for the sum of seven hun-
 dred and seven dollars and seventy-five cents;
 and in favor of the plaintiff, William Tallman,
 for the sum of seven hundred and seven dollars

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Testimony.

and seventy-five cents; and in favor of the plaintiff, Stephen Bostwick, for the sum of seven hundred and seven dollars and seventy-five cents; and in favor of the plaintiff, George J. Bell, for the sum of seven hundred and seven dollars and seventy-five cents, besides costs to be taxed nisi. 10

Entered October 25, 1917.

On motion of

J. EMIL WALSCHEID, Attorney.

A True Copy.

WM. C. GEBHARDT, Clerk. 20

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TWO CASES.

Testimony.

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JOHN HANDWERK, et als,

vs.

TOWN OF GUTTENBERG.

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Transcript of shorthand notes of testimony
taken on the 3rd day of December, 1915, before
Speer, J., without a jury.

APPEARANCES:

J. Emil Walscheid for the plaintiff.

Warren Dixon for the defendant.

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GEO. P. KELLEY,
Official Stenographer,
Eighth Judicial Dist. of N. J.,
Court House,
Jersey City, N. J.

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Testimony.

NEW JERSEY SUPREME COURT.

JOHN HANDWERK AND STEPHEN
BOSTWICK, et als,

VS.

TOWN OF GUTTENBERG, IN THE
COUNTY OF HUDSON,

10

JOHN HANDWERK, et als,

VS.

TOWN OF GUTTENBERG.

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Two cases tried together, Friday, December 3, 1915, before Speer, J., without a jury. J. Emil Walscheid for plaintiffs, Warren Dixon for defendant.

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Mr. Walscheid: So that your Honor may understand the matters in controversy: The Town of Guttenberg, on the 15th day of December, 1913, adopted an ordinance pursuant to the provisions of an act entitled, "An Act concerning incorporated towns in this state and certain officers thereof." That act empowers the municipality to establish, regulate and control a day and night police, and to regulate and define the manner of their appointment and removal, their duties and compensation. It also contains a provision that the qualified voters of the several incorporated towns of this state shall have power to raise in each year by vote at the an-

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Testimony.

10 nual town meeting or charter or municipal election such sum or sums of money as they shall deem expedient for the following purposes—enumerating all the purposes in the act, and enumerating among other things for the support of the police department.

Mr. Dixon: There is another provision in it.

20 Mr. Walscheid: “But no appropriation shall be raised or ordered except by a majority of all the voters voting at such election”—such election being the annual town meeting or charter or municipal election—the act having been approved May 9th, 1884, when such elections were still in vogue. The ordinance having been passed—and its adoption is admitted in the pleadings—the officers therein designated were appointed. They were appointed on the 19th day of December, 1913. They immediately took the oaths of office, qualified and entered upon the performance of their duties. Within 30 twenty-four hours thereafter a writ of certiorari was served upon the municipality and all action under that ordinance was therefore stayed. The case was taken to the Supreme Court and argued and was decided in favor of the town. It was decided on the 24th day of April, 1914,—I think that is the date—

40 Mr. Dixon: The judgment was entered on the 24th.

Testimony.

Mr. Walscheid: The 24th day of April, 1914. Some time in May a writ of error was taken and the case was taken to the Court of Errors, and the Court of Errors in 86, N. J. L., p. 681, affirmed the proceedings below upon the memorandum which has been filed below by Mr. Justice Swayze, and a judgment was entered some time in November following. The entry of that judgment is not material to anything which will follow. 10

Dr. Dixon: I think it is. It was decided in the November term.

Mr. Walscheid: Yes; decided in the November term, 1914. The municipality being prevented by this writ of certiorari from having the police perform police duty under the ordinance which had been adopted, looked to the charter of the Town of Guttenberg, which was passed in 1859, and pursuant to Section 15 of that act, which reads as follows, that "the said corporation shall have power to appoint such number of subordinate officers and agents as they may deem proper to enforce all such ordinances as they may be authorized by this act to pass, which officers shall have power to arrest all persons violating any of the ordinances of this corporation and to bring them before some one of the councilmen, who may proceed in a summary way to hear and determine the said charge, and if the said person so charged 20 30 40

Testimony.

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shall be found guilty, the said councilmen may impose a fine and in default of payment may commit the person to the county jail until said amount shall be paid, together with all the fees of the jailer for keeping him or them." Laws of 1859, p. 206. Pursuant to that section the Board of Councilmen of the Town of Guttenberg thereupon upon the first day of January, 1914, adopted a resolution nominating and appointing the identical men who had been nominated and appointed policemen, subordinate officers and agents under this section and fixed their compensation, appointing them for one year. The adoption of that resolution is also admitted. The men from the first day of January then went out protecting the town so far as they could against ordinance violations. That was the extent of the duty to which they had been assigned. When the opinion of the Supreme Court was handed down on the 24th day of April, 1914, and within a day thereafter, I think it was on the 25th day of April, the Board of Council through the chairman of its police committee, called the man who had been appointed captain under the police ordinance before him, informed him that the Supreme Court had sustained the proceedings of the municipality and adopted the police ordinance and ordered him to go to work together

Testimony.

with his police force as of May 1st, 1914, and thereafter continue at work as policemen. The judgment of affirmance had been at that time entered, on the 24th, the day before. There was no suit of any kind—I believe it was on the 6th day of May they took their appeal—any how it was subsequent to that date.

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Mr. Dixon: I will give you that. The notice of appeal was signed May 6th, 1914.

Mr. Walscheid: Yes; and the men thereafter proceeded to work as policemen and worked as policemen until the 18th day of January, 1915, when the Board of Council of the Town of Guttenberg adopted another ordinance repealing the ordinance which had created the police force. That resolution or ordinance in turn has been sustained by our Court of Errors as a valid exercise of municipal functions. In the meanwhile, and in December, 1914, these men had formally resigned as ordinance officers, the resignations to go into effect as of May 1st. Their term had expired on the first of January, anyhow, so that they now come before this court claiming compensation for the period from January 1st, 1914, to May 1st, as ordinance officers under the resolution appointing them and at the rate fixed by that resolution; from May 1st, to the 15th day of January, 1915, as police officers under the ordi-

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Testimony.

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nance appointing them police officers. The certiorari proceeding presented, among others, an issue which has been injected into these two cases, viz.: the fact that there was no appropriation at the time when this police ordinance was adopted.

The Court: There was no what?

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Mr. Walscheid: There was no appropriation when this police ordinance was adopted. The Supreme Court distinctly found that there was appropriation for the year 1913. That was the year in which the appointment was made. Of course, we are not now interested with any salaries for the year 1913, because none are claimed. They are all claimed for the year 1914, and the Court of Errors sustains the finding of the Supreme Court. In fact, that being a finding of fact, I suppose the Court of Errors would not touch it anyway; but the Court of Errors sustains the finding of the Supreme Court upon Mr. Justice Swayze's memorandum, so that we have the finding of the Court of Errors that there was an appropriation for the year 1913 when this ordinance was adopted, and that there was sufficient money on hand with which to meet the payment of the police salaries.

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Now there had been passed in the year 1913 an ordinance providing for appropriations for the fiscal year beginning January 1st, 1914, running to January

Testimony.

1st, 1915, and under that ordinance collections were made and taxes levied and raised in the year 1914, so that in the year 1914, pursuant to the provisions of that ordinance moneys came in for the maintenance of this police department. In connection with the appropriation issue I would like to call your Honor's attention, first, to the language of the act of 1884, which gives to the municipality the right, among other things, to fix the manner of the appointment of the policemen, and of their removal, and also to fix their duties and their compensation; so that by the act of 1884 the municipality was empowered to provide for a fixed compensation for these men during the continuance of their tenure. The tenure in turn is defined by the police tenure of office act which provides that they shall hold office during good behavior; so that when these men were appointed their compensation was fixed and their tenure was fixed and it will be our contention that the failure of the municipality subsequently to provide for the maintenance of this department cannot affect the right of these officials to claim compensation during the continuance of the tenure fixed by law.

I think I have opened this matter as completely as I am able to. There are two cases, and I suggest that they be

Testimony.

heard together, although separate judgments will undoubtedly have to go in the cases.

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Mr. Dixon: Do you claim that these police appointees did actually perform the duties of the office during this time?

Mr. Walscheid: During what time?

Mr. Dixon: The period for which you sue, from January 1st, 1914, until December 31st, of the same year.

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Mr. Walscheid: My action under the police ordinance runs from May 1st, 1914, to January 15, 1915. During that time I claim they performed the regular police duties provided for by the ordinance and under the Laws of the State of New Jersey. My other action runs from January 1st, 1914, to May 1st, 1914, during which time I claim they performed the duties imposed upon them by section 15 of the town charter as ordinance officers.

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Mr. Dixon: That is one of the facts in dispute.

Mr. Walscheid and I both desire very much to have this case determined upon its actual merits both in law and in fact, and if the pleadings need to be shaped so as to present all the questions that ought to be presented on the matter I think we will consent. So far as we are concerned it may be done.

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Mr. Walscheid: I do not want you to inject any new matter which would oper-

Testimony.

ate by way of surprise to me. Have you anything in mind now that you desire to offer?

Mr. Dixon: I have in mind—I do not want to argue the question unless it is embraced in the pleadings—I think you will remember the facts, that under the writ of certiorari, which was a stay, they had no right to do police duty under the ordinance. That seems to be conceded. If that fact is not presented by the pleadings I want that in such shape that I may put in evidence the record of that case to show that they have no right to perform any duties under that ordinance; and I claim that that stay ran until the final adjudication in the matter which was in about December, 1914. 10 20

Mr. Walscheid: You contend that the stay continued during the appeal in the Court of Errors?

Mr. Dixon: Most assuredly.

Mr. Walscheid: Our contention is it terminated with the decision of the Supreme Court. 30

The Court: If the pleadings are not adequate to cover that point you consent they may be amended to cover it?

Mr. Walscheid: Yes.

The Court: All right.

Mr. Dixon: That is one. That is as to the ordinance. Now as to the claim that they make in regard to the appoint- 40

Testimony.

ment as ordinance officers, not as policemen but as town officers, I claim that their appointment which is pleaded in the complaint as being made on the first day of January, 1914—

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Mr. Walscheid: And which is admitted.

Mr. Dixon: And which is admitted. That resolution was in effect repealed on the fifth day of January, 1914, five days afterwards, by a resolution wherein it was resolved as follows: that "Charles Rademacher and Christopher Barth be and they are hereby (and one of these is a plaintiff) appointed special subordinate officers or agents, without pay, and their duties to consist of enforcement of ordinances and such other duties as the town charter provides; and be it further resolved that all special officers' badges with the exception of the two just issued be and are hereby recalled."

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I desire to argue that that was a repealer of the appointment by resolution of these officers as ordinance officers made on January the 1st. I think probably the pleadings will cover the admission of that in evidence, but if not they ought to be framed that your Honor may pass upon that question.

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Mr. Walscheid: I do not think that Mr. Dixon's pleadings do cover this point, and I am rather surprised at the claim now advanced. I suppose it is based up-

Testimony.

on the portion of the resolution which provides: "Resolved that all special officers' badges with the exception of the two just issued be and are hereby recalled"; and that that amounts to an implied repealer of the proceeding resolution. 10

Mr. Dixon: Yes; that is my proposition.

Mr. Walscheid: That is rather ambiguous language and if that becomes important I should like permission to offer the testimony of the council as to just what is meant by that resolution—just what the men who passed it intended to cover. I do not think it will cover it, but I would like to reserve that right. I do not want to debar Mr. Dixon from the right of advancing any plea. If he is to have the right to add pleas I should have the right to produce additional testimony. 20

The Court: That will be permitted.

Mr. Dixon: Mr. Barth is a plaintiff in the second suit. 30

Mr. Walscheid: Yes; he is a plaintiff in the subordinate officers' cases.

Mr. Dixon: I think he is in the other.

Mr. Walscheid: No; he is not in the other.

Mr. Dixon: Now there is another resolution—while we are here we might as well bring these to the attention of the 40

Testimony.

Court—the resolution of December where
 they resigned, December 1st, 1914. “On
 December 1st, 1914, the chairman of the
 police committee made a report to the
 council, which report was received and
 accepted and the chairman of the police
 committee ordered the police force for
 work as of May 1st, 1914,—be and the
 same is hereby ratified and confirmed.”
 And at the same meeting the following
 appears: “We, the undersigned, who
 have heretofore been appointed ordinance
 officers by resolution adopted on the 1st
 day of 1914, do hereby respectfully resign
 as ordinance officers, said resignation to
 go into effect as of the first day of May,
 1914 (this is December). John Hand-
 werk, Steve Bostwick, William Tallman,
 Peter Handwerk, John Buckley, Christo-
 pher Barth, George J. Bell.” And a reso-
 lution was passed that “the resignations
 of John Handwerk, John Buckley, Chris-
 topher Barth, Peter Handwerk, George
 J. Bell, Stephen Bostwick, William Tall-
 man, as ordinance officers of the Town of
 Guttenberg, to go into effect as of the
 first day of May, 1914, be and the same
 are hereby received and accepted. Mc-
 Ilreith and Miller.” The fact is that
 Barth was not appointed ordinance officer
 at any time except as he was appointed by
 the other resolution to which I have called
 your Honor’s attention. I think those cover

Testimony.

the material facts that have been covered. That is all that I care to call to the court's attention at this time. I would like to amend the pleadings if necessary.

Mr. Walscheid: I desire at this time to make a motion and to move to amend the summons in the case which I term the police salary case, by adding to the summons the name of Stephen Bostwick, his name having been omitted from the summons, although it appears in the complaint and runs through the complaint and the answer has gone to the whole complaint. I suppose there is no objection to that. 10 20

Mr. Dixon: No.

Mr. Walscheid: I now desire to offer in evidence the record in the case of Daniel Herman and Killian V. Lutz vs. Mayor and Council of the Town of Guttenberg, and the Town of Guttenberg in the County of Hudson, being the certiorari case hereinbefore referred to, consisting first, of the state of the case, together with the brief of the appellant and appellee in the Court of Errors. The only thing that is missing from this record I take it, is the formal judgment of affirmance in the Court of Errors, the judgment below being before the court. 30

Mr. Dixon: We can get that.

The Court: I suppose you will want that in order to have the date established in case I should find as Mr. Dixon contends. 40

Testimony.

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Mr. Walscheid: While on that question of supersedeas I might call your attention to Lantz vs. Hightstown, 46 N. J. L. 102, which to my mind absolutely disposes of this very proposition and indicates that the supersedeas of the writ disappears upon the judgment of affirmance in the Supreme Court—is not carried into the Court of Errors.

(Papers offered as above marked P-1, 2 and E).

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Mr. Walscheid: Another interesting case to which I might at this time call your Honor's attention is the case of Helfer vs. Simon, 24 Vr. 550. That is not so much on the point of the limitation of the supersedeas as the extent of the supersedeas while it is in force. It shows that the supersedeas is only limited to the action under the police ordinance, and that action taken under other resolutions—

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The Court: You mean under the 1859 act, in other words?

Mr. Walscheid: Yes under other authority; in other words, it is the justification for the proceeding.

The Court: I see what you mean—for your second resolution.

Mr. Walscheid: Yes.

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WILLIAM BRAMLEY, sworn:

Mr. Walscheid: I have made a sort of an analysis of the pleadings in this case for my own guidance, and perhaps it might be well for me to state what I consider the admissions are and what I consider I ought to prove, so that your Honor in dealing with this case afterwards may be saved considerable time. 10

First, the ordinance is admitted by the pleadings—dealing now with the police officers' case.

Second, the appointment of the officers under the ordinance is admitted.

There is an allegation in the complaint that each of these officers took an oath of office which was filed and entered upon the performance of their duties. That allegation is denied. There is an allegation in the pleadings that they worked from May 1st, 1914, to January 18th, 1915, as police officers, and that allegation is denied. There is an allegation that they presented sworn claims for the work covering this period of time, and that allegation is denied. 20 30

The non-payment of the claims is admitted.

That is the matter so far as this case number 2 is concerned, the police officers' case. In the subordinate officers' case there is an allegation that Guttenberg is organized under a special charter, reciting it. That is admitted. 40

William Bramley—Sworn.

There is an allegation that these men, the complainants in the case, were appointed ordinance officers under section 15 of the charter.

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The adoption of that resolution is admitted, although the power to adopt the resolution is denied. There is an allegation that they filed oaths of office and entered upon the performance of their duties. That is denied.

There is an allegation that they worked from January 1st to May 1st, 1914. That is denied.

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There is an allegation that they presented sworn claims for this work. That is admitted.

The Court: It is also admitted, I suppose, that they were not paid.

Mr. Walscheid: And that they were not paid. I intend first to deal with the police officers' case. That is from May 1st, 1914, to January, 1915.

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WM. BRAMLEY, SWORN.

Direct Examination by Mr. Walscheid:

Q. Mr. Bramley, you are now the town clerk of the records? Town of Guttenberg? A. Yes, sir.

Q. And you are under subpoena to produce certain records? A. I was.

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Emil Nothacker—Direct.

Q. You were subpoenaed to produce the oaths of office of the policemen of the Town of Guttenberg. Have you any such oaths of office? A. I have no such oaths of office in my possession.

Q. Have you any records in your minutes containing anything in relation to them? A. Not to my knowledge. 10

Q. Have you the minutes for the year 1913? A. Yes, sir; they are there (indicating).

Q. Have you made any examination to find these oaths of office? A. I have tried my best to find them.

Q. And you did not find them? A. No, sir; not in the limited time I have had. 20

(No cross examination).

Mr. Dixon: We would like to have that book marked for identification—minutes of 1913. Designated D-1 for identification.

EMIL NOTHACKER, SWORN. 30

Direct Examination by Mr. Walscheid:

Q. Were you the town clerk of the Town of Guttenberg? A. Yes, sir.

Q. When did you cease to be? A. December 31, 1914.

Q. Were you Town Clerk in the year 1913? A. Yes, sir. 40

Q. Did you take the minutes of the meeting at which that was done? A. I did, yes, sir.

Emil Nothacker—Direct.

Q. Will you turn to the minutes of December 15th, 1913, and see whether that is the— A. December 15th?

10 Q. Yes. See whether that is the meeting at which the ordinance creating the day and night police was finally adopted? A. What date?

Q. December 15th, 1913. A. Here it is.

Q. This (indicating)? An ordinance to amend? Here is one here. December 15th.

Q. All right. Go ahead. A. There it is.

Q. Now what was the question?

(Question repeated).

A. Yes, sir.

20 Q. Subsequent to the adoption of this ordinance were any officers appointed policemen? A. Yes, sir.

Q. Do you remember how soon after? A. I believe the following meeting.

Q. At the following meeting, on December 19th, 1913? A. Yes, sir.

Q. And are those your resolutions of appointment? A. Yes, sir.

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Mr. Walscheid: These resolutions of appointment are also found upon page 13 of the printed book in Herman et al vs. Guttenberg. I offer the resolutions in evidence.

(Designated P-4).

40 Q. Subsequent to that time did these men thus appointed police officers file with you oaths of office? A. Yes, sir.

Emil Nothacker—Direct.

Q. How soon after, do you know? A. That I do not recollect.

Q. And were they sworn to? A. Yes, sir.

Q. By each of them? A. Yes, sir.

Q. And what did you do with them? A. Filed them under "Oaths of Office" in the Town Hall vault. 10

Q. Under "Oaths of Office"? A. Under "Oaths of Office."

Q. Is there a box there entitled "Oaths of Office"? A. Yes, sir.

Q. Will you now turn to the meeting of December 1st, 1914? At that meeting was there a report made by the chairman of the police committee of the Town of Guttenberg? A. Yes, sir. 20

Q. Who was the chairman at that time? A. Councilman McIlreith.

Q. Was he a member of the Board of Council? A. Yes, sir.

Mr. Walscheid: I offer in evidence the report of S. F. McIlreith, found upon page 225 of the minutes, and the proceedings in relation thereto, which read as follows: 30

Mr. Dixon: I do not object to the report as evidence, except that I do object to the verity of the facts as recited in that report—for instance he says that on a certain date long prior thereto he told these officers what to do, or something like that. I think that is the one you refer to. 40

Emil Nothacker—Direct.

Mr. Walscheid: Yes, but that goes to the probative force of the report, not as to the legitimacy of its admission.

10 Mr. Dixon: I say I do not object to the report itself.

(Designated P-5).

Mr. Walscheid (reading): "Stated Session of the Board of Council held December 1st, 1914. Upon motion of Councilman Miller, seconded by Councilman Schultz, the following report was accepted by the following vote: Ayes: Councilmen Miller, McIlreith and Schultz; noes: Councilmen Schneider and Mayor Herrmann. Absent none.

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" 'As chairman of the police committee I beg to report that for and on behalf of the police committee I informed Captain John Handwerk of our police department on April 25 last, that the Supreme Court of the State of New Jersey had dismissed the proceedings instituted by Mayor Herrmann to have the ordinance creating the police department and resolutions appointing policemen declared void, and that from that day on there was no restraint by reason of any court proceedings against the members of the police force acting for the town in the capacity of policemen, and therefore ordered said captain to instruct the members of the police force to go to work under the ordinance, beginning with the first of May, 1914. (Signed) S. F. McIlreith.'

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Emil Nothacker—Direct.

“Upon motion of Councilman Miller, seconded by Councilman Schultz, the following four resolutions were adopted by the following vote: Ayes: Councilmen McIlreith, Miller and Schultz; noes: Councilmen Schneider and Mayor Herrmann. Absent, none. 10

“Resolution that the report of the chairman of the police committee be received and accepted and that the action of the chairman of the police department in ordering the police force to work as of May 1st, 1914, be and the same is hereby ratified and confirmed.”

The other three resolutions do not affect this police salary case, Mr. Dixon. 20

Mr. Dixon: The resolution is offered, isn't it?

Mr. Walscheid: Yes.

Mr. Dixon: Why don't you put them all in?

Mr. Walscheid: All right. I shall continue to read matter which affects the other case, and which was adopted by this same vote. 30

“We, the undersigned, having heretofore been appointed ordinance officers by resolution adopted on the 1st day of January, 1914, do hereby respectfully resign as ordinance officers, such resignation to go into effect as of the first day of May, 1914. Signed John Handwerk, John Buckley, Christopher Barth, George J. Bell, Steve Bostwick, William Tallman, Peter Handwerk. 40

Emil Nothacker—Direct.

10 “Resolved, that the resignations of John Handwerk, John Buckley, Christopher Barth, Peter Handwerk, George Bell, Steve Bostwick and William Tallman as ordinance officers of the Town of Guttenberg, to go into effect on the first day of May, 1914, be and the same are hereby received and accepted.”

The fourth matter related to a matter of audit of books, which has nothing to do with this case at all.

Q. During your term of office did you receive any sworn claims from the members of the police force for their services? A. Yes, sir.

20 Q. And were these claims ordered paid? A. Yes; they were ordered paid.

Mr. Dixon: Read the records of them.

Q. Will you look at the minutes of December 31, 1914? Do you find there any record of the police claims having been ordered paid? A. Yes, sir.

30 Mr. Walscheid: I offer in evidence minutes beginning page 239 of the minute book heretofore marked for identification, reading as follows:

“Upon motion of Councilman Schultz, seconded by Councilman McIlreith, the following resolution was adopted by the following vote: Ayes: Councilman McIlreith, Miller and Schultz; noes: Councilman Schneider and Mayor Herrmann.

40 Absent, none.

“Resolved, that the claims of Peter Hand-

Emil Nothacker—Direct.

werk, William Tallman, Christopher Barth, John Buckley, Stephen Bostwick, George J. Bell and John Handwerk for services rendered as members of the day and night police of the town from May 1st, 1914, to December 1st, 1914, as presented by them, be and the same are hereby ordered paid.

10

Peter Handwerk, services as patrolman from May 1st to December 1st, 1914, \$490.

George Bell, services as patrolman, from May 1st to December 1st, 1914, \$490.

Stephen Bostwick, services as patrolman from May 1st to December 1st, 1914, \$490.

William Tallman, services as patrolman from May 1st to December 1st, 1914, \$490.

20

John Buckley, services as sergeant, day and night police, May 1st to December 1st, 1914, \$525.

John Handwerk, services as captain, day and night police, May 1st to December 1st, 1914, \$583.33.' "

Q. At the same time, were sworn claims presented by the ordinance officers for services from January 1st, 1914, to May 1st, 1914? A. Yes, sir.

30

Q. And were those claims ordered paid at that meeting? A. Yes, sir.

Mr. Walscheid: I offer from the same book and same page the following:

"Upon motion of Councilman Schultz, seconded by Councilman McIlreith, the following resolution was adopted by the following vote:

40

Emil Nothacker—Direct.

Ayes: Councilmen McIlreith, Miller and Schultz;
noes: Councilman Schneider and Mayor Herr-
man. Absent, none.

10 ‘Resolved, that claims of Peter Handwerk,
William Tallman, George Bell, John Buckley,
Stephen Bostwick, and John Handwerk, for
services rendered as ordinance officers from Jan-
uary 1st, 1914, to May 1st, 1914, as presented
by them, be and the same are hereby ordered
paid.

Peter Handwerk, services as ordinance officer,
January 1st to May 1st, 1914, \$260.

20 William Tallman, services as ordinance officer,
January 1st to May 1st, 1914, \$260.

John Buckley, services as ordinance officer,
January 1st to May 1st, 1914, \$260.

Stephen Bostwick, services as ordinance offi-
cer, January 1st to May 1st, 1914, \$260.

George Bell, services as ordinance officer, Janu-
ary 1st to May 1st, 1914, \$280.’ ”

30 Q. Will you turn to the minutes of January
1st, 1914? Do you find there a resolution ap-
pointing ordinance officers of the Town of Gut-
tenberg? A. Yes, sir.

Mr. Walscheid: I offer in evidence a
resolution found upon page 102 of the
minutes, which reads as follows—being
part of the minutes of the Board of Coun-
cil of the Town of Guttenberg held Janu-
ary 1st, 1914, at 12 o’clock noon.

40

“Resolved, that the following subordinate offi-

Emil Nothacker—Cross.

cers or agents be and are hereby appointed for the ensuing year at the salaries set opposite their names, to be paid in equal semi-monthly instalments at the middle and end of each month:

John Handwerk, \$800 per year.

Stephen Bostwick, \$780 per year.

John Buckley, \$780 per year.

Peter Handwerk, \$780 per year.

William Tallman, \$780 per year.

George J. Bell, \$780 per year.

(Signed) Joseph Schultz, Jacob Miller, Sam-

uel F. McIlreith."

Q. Was that resolution adopted at that meeting? A. Yes, sir.

Q. Did the men appointed at that meeting subsequently file with you oaths of office for the performance of their duties as subordinate officers and agents? A. Yes.

Q. And what did you do with these oaths of office? A. Filed them under "Oaths of Office" in the vault.

Q. Filed them in the same place where you filed the other oaths of office? A. Yes, sir.

Cross Examination by Mr. Dixon:

Q. Turn to the meeting of January 5th, 1914, on page 110.

Mr. Dixon: Do you mind my offering it in evidence?

Mr. Walscheid: No; I have no objection.

Emit Nothacker—Cross.

Mr. Dixon: On behalf of the defendant we offer in evidence a resolution passed at a meeting January 5th, 1914, reading as follows:

10 “Resolved, that Charles Rademacher and
Christopher Barth be and are hereby appointed
special subordinate officers or agents without
pay, their duties to consist of enforcement of
ordinances and such other duties as the town
charter provides, and be it further resolved that
all special officers’ badges with the exception
of the two just issued be and are hereby re-
called.” (Signed) Jacob Miller, Councilman;
20 Joseph Schultz, Samuel F. McIlreith; and passed
on motion of Councilman, seconded by Council-
man McIlreith. Ayes: McIlreith, Muller, Schultz,
Schneider and Mayor Herrmann. Noes: none.
Absent, none.

Q. That was adopted, wasn’t it? A. Yes, sir.

Q. You do not know whether these oaths of
office were made actually, do you, that purport
30 to have been sworn to—the oaths? A. If I am
not mistaken I think the recorder swore them
in or put his oath of office on them—his testi-
mony.

Q. You do not remember just the dates when
they purport to have been taken? A. No, sir;
I do not recollect. They are on file up in the
office.

Q. They are on file? A. Yes, sir; they are on
40 file up in the office.

Q. You did not turn over anything to your

Emil Nothacker—Redirect.

successor, did you? A. Yes, sir.

Q. He had to mandamus you, didn't he? A. That was a thing that I had forgotten once; but the oaths of office were there.

Q. They demanded all the papers and you turned over everything, did you? A. Yes, sir, I turned over everything. 10

Redirect Examination by Mr. Walscheid:

Q. Did you see the oaths of office sworn to? A. Yes, sir; they were presented at the time the resolution went in, right after that the recorder gave them to me, and each man had had it signed and I filed them. 20

Q. They were presented to you right after the adoption of the resolutions of appointment? A. Yes, sir; they were down in the recorder's room and were sworn there, and then they brought them all in to me and I filed them that same evening, I believe.

Q. That applies to the oaths of office as policemen and as subordinate officers too? A. Yes, sir. 30

Paul Dudley Chase—Direct.

PAUL DUDLEY CHASE, SWORN.
(Witness withdrawn).

10

Mr. Walscheid: I would like to recall
Mr. Nothacker.

EMIL NOTHACKER, recalled.

By Mr. Walscheid:

20

Q. In the year 1913 was there a tax ordinance
adopted? A. Yes, sir.

Q. Can you find it? Some time in July or
August? A. Here it is.

Q. Is that it? A. That is one of them.

30

Mr. Walscheid: I offer in evidence record on page 55 and page 56 of the minute book hereinbefore referred to, and the tax ordinance there set out, which tax ordinance is also found upon pages 25, 26, 27 and 28 of the printed book in Herrmann vs. Town of Guttenberg.

(Designated P-6).

Mr. Dixon: That is the tax ordinance of 1913?

Mr. Walscheid: That is the tax ordinance adopted in 1913.

Mr. Dixon: Well, for what?

40

Mr. Walscheid: For what it says, for the year 1914.

Paul Dudley Chase—Direct.

Mr. Dixon: I don't think so.

Mr. Walscheid: To be levied in the fall of 1913 for expenditures in the year 1914.

Mr. Dixon: There is no law permitting that to be done. 10

Mr. Walscheid: "For town purposes in the Town of Guttenberg in the County of Hudson in and during the fiscal year commencing January 1st, one thousand nine hundred and fourteen and ending December 31st, one thousand nine hundred and fourteen."

20

PAUL DUDLEY CHASE resumes the stand.

Direct Examination by Mr. Walscheid:

Q. Mr. Chase, what is your business? A. I am a public accountant.

Q. Where do you reside? A. 39 Remsen street, Brooklyn. 30

Q. Are you connected with any business firm in your profession? A. Townsend & Dix, 45 Nassau street.

Q. And did the firm of Townsend & Dix do any work for the Town of Guttenberg in the County of Hudson in the line of examination of books and accounts during the year 1913 A. Yes, sir.

Q. And who did that work; did you do it? A. I did it. 40

Paul Dudley Chase—Direct.

Q. And did you subsequent thereto, in the year 1913, make a full examination of the town books for any particular purpose? A. Yes, sir.

10 Q. And for what purpose? A. To ascertain the condition of the police fund as of the last of December, 1913.

Q. And what period of time did your examination cover? A. 1908 to—well, the years 1908, 1909, 1910, 1911, 1912 and 1913.

Mr. Dixon: '13?

A. Up to—or the investigation covered 1908, 1909, 1910, 1911 and 1912. That is my recollection of it at the moment—subject to the record.

20 Q. Did you make a report at that time? A. I did.

Q. Have you that report with you? A. I have.

30 Q. Will you refresh your recollection from that report as to the period of time which it did cover? A. My report covers the years beginning with the 1st of January, 1908; it covers the years 1908, 1909, 1910, 1911 and 1912, and shows a balance at that point, and is then brought up to the 1st of December, 1913, by the addition of the levy for the year 1914, levied in 1913, December, and is increased by the amount of the police fines, the recorder's fines, etc., during the year 1913, reduced by the expenses for that period, resulting in the final

40 balance after a credit of a transfer from the saloon license—

Paul Dudley Chase—Direct.

Mr. Dixon: I object to that testimony as immaterial.

Mr. Walscheid: I won't ask him that.

Q. Your examination then did cover funds which came into the hands of the town during the year 1913? A. It did. 10

Q. And brought your examination down to the 31st day of December, 1913? A. Yes, sir.

Q. Did you examine the bank pass books and bank balances of the town? A. Not at the time of this special examination. I did at other times.

Q. But you did at the time you made your general examination A. Audited the town accounts, yes. 20

Q. And examined all of the treasurer's books? A. Yes, sir.

Q. And the other books of the town? A. Yes, sir.

Q. As a result of that examination can you state how much was on hand as of January 1st, 1913, in the fund called the police fund? 24

Mr. Dixon: I object as immaterial, and irrelevant. The question here presented is whether or not any appropriations were made for the payment of salaries of the police officers in 1914.

The Court: Well, do you admit that at the date of the appointment in 1913 there was—

Mr. Dixon: No; I do not admit it, but 40

Paul Dudley Chase—Direct.

I do not think it is material.

The Court: I think it may be material, so I will permit the question to be asked.

10

Mr. Walscheid: Perhaps I ought to have stated that I called Mr. Chase at this time without asking your Honor's permission. I think that his testimony would only be material by way of rebuttal to the defense, if there is any offered. I do not think it is part of my direct case.

Mr. Dixon: I do not object to that.

20

A. Yes.

Q. How much? A. \$4,398.16.

Q. That is as of what date? A. January 1st, 1913.

Q. Now as of December 31, 1913. What was the amount? A. \$7,796.47.

Q. Can you tell us the source from which these moneys making up this fund as of December 31, 1913, came? A. Yes, sir.

30

Q. Will you do so? A. Do you wish me to do it in detail?

Q. Well, have you a synopsis of those sources? A. Yes.

Q. And that is a correct statement of the sources and the balances? A. It is.

Mr. Walscheid: I offer the statement.

A. I think it is in the record now; it is in the printed record.

40

Mr. Dixon: I object to the account as irrelevant.

Paul Dudley Chase—Cross.

Mr. Walscheid: The statement is in the printed book and is found on the last page, page 74 of the book. Mr. Chase has called my attention to a typographical error which he desires to have corrected.

10

A. I would like to say that I have not seen this testimony that I gave at the former trial until this morning. This printed copy was handed me, and in going over it since I entered the court room I noticed a bad printer's error on page 34 of the record in which the following question was asked me: "And that gives a total for the period from 1908 to and including 1912 of how much? A. It gives me total credits of \$1,429.90." That is the printed record. My testimony was \$14,290.08. I thought I should speak of it as I happened to notice it.

20

Cross Examination by Mr. Dixon:

Q. Are these the town books that you used for your examination (indicating)? A. Let me see those, please. This is the cash book of the Town of Guttenberg beginning the first of January, 1913—yes, this is used as far as the year 1913 is concerned.

30

Q. That is what you are testifying to, only the year 1913. Well, I mean not later than that? A. No.

Q. Where is the police fund in there? A. I will answer the question by saying that the police fund is not specifically credited on the cash book.

40

Paul Dudley Chase—Cross.

Q. Which book is it specifically credited in?

A. On the set-up of the last levy for the year which specifically provides a certain amount for the police fund.

10 Q. You were doing some bookkeeping then, were you? A. No, sir; I was giving the result of the action of the board.

Q. Do you find any police fund in that book?

A. We find disbursements for the police fund.

Q. No police fund? A. All receipts for the police fund are found; the general taxes which are credited out of the receipts from the tax collector.

20 Q. You do not know, then, how they were used, the moneys that went for the police fund; you do not know anything about that, do you? A. Yes, I do.

Q. Do you? A. Yes, sir.

Q. Under what system? Did you use this one (handing witness another book)? A. I guess this is the payment side—yes.

30 Q. How does that run? Does that show any police fund? A. Yes.

Q. It does show a police fund? A. Yes; it is specifically headed as such (indicating).

Q. What does that mean A. Those are payments to the police, and it is charged on the ledger to the police fund.

Q. Does it show the balance on hand? A. No cash book shows a balance on hand.

40 Q. Is this a cash book? A. That is the cash book purely and simply.

Q. You have not shown me the ledger. What

Paul Dudley Chase—Cross.

does it show with regard to the 31st of December, 1913? A. It shows that in that money there was paid to the police \$231.67 and that it posted on ledger 271 to the debit of the police fund.

Q. Will you show the balance in the police fund? A. The ledger will show the complete balance in the fund. 10

Q. I cannot show you the ledger. That was stolen just after you fixed it—made your account. A. I beg your pardon?

Q. That was stolen after you had made your account.

Mr. Walscheid: That is not for this record. 20

Mr. Dixon: No. We will prove that.

A. If it is necessary for your purpose I will volunteer that I can furnish you the amount—

Q. Have you a copy of that? A. I have in my office records showing the balances of that ledger which you say has disappeared.

Q. That is gone and we have not your report yet, unfortunately. A. Our printed—? 30

Q. Yes. A. We have that in our office. It is easy enough to get it.

Q. The full report? A. We can give you a copy of it, whenever you want it.

Q. Where did you file that report?

Mr. Walscheid: I object to that.

Mr. Dixon: I only want it for information. 40

Paul Dudley Chase—Cross.

Q. Where did you file it? A. Where did we file it?

10 Q. Yes; the report. A. My recollection is that a copy of it was given to the grand jury of Hudson County, and also a copy to the officers of the Town of Guttenberg.

Q. Did you have more than one original? A. We made several copies.

20 Q. Now that seven thousand dollars that you say was in the police fund on the 31st of December, 1913, that seven thousand dollars you say was in the police fund, what do you mean by that? A. I mean that the ledger of the Town of Guttenberg showed that there was a credit to the police fund of that amount unexpended.

Q. That is it ought to be in bank somewhere, should it? A. I did not say so.

Q. Well, what about that? A. I said that there was on the ledger to the credit of the police fund \$7,796.47.

30 Q. Well, could it be simply a book credit and nothing more? A. An amount available for police disbursements.

Q. Do you mean that that available amount was uncollected taxes? A. I didn't say that; I said that that was an amount available for disbursements.

Q. You mean that the fund ought to have a credit of that much money. I said that it had that credit.

40 Q. Yes; it had that credit; by balancing up all of the expenses of the town and the appropriations made to the police fund as you figure them,

Paul Dudley Chase—Cross.

you would have that credit left? A. I did not say that; I said that the credits amounted to that, and that they were the result of the tax levies plus receipts from fines, etc., and with sundry minor adjustments for remitted taxes.

10

Mr. Walscheid: You also figured in deductions for tax appeals?

A. I do not call it by that term. There were one or two slight remittances of taxes by the Board of which the proportionate amount which had been credited to the police fund was charged off—in other words, that is the net balance after all the cash which had been received on account of the tax receipts, and the transfers from the saloon license fund—

20

Q. Transfers from saloon licenses? A. Yes, sir. The record shows that they had credited in 1908 an amount of \$1658 to the police fund from the saloon license fund, and that again in 1913 there had been three thousand dollars so transferred; and it is in my testimony, I think—the record of where those transfers were voted by the Board.

30

Q. What tax ordinances did you examine? A. The assessment rolls which had been certified by the county assessors.

Q. For what years? A. All the years in question.

Q. 1913? A. 1908, 1909, 1910, 1911, 1912 and 1913.

40

Q. And 1913?

Paul Dudley Chase—Cross.

Mr. Walscheid: Are you sure about 1913?

Mr. Dixon: We don't know. We haven't anything to check him up with.

10 A. It is a long time since I did this. I won't swear to 1913, but I will swear to 1908, 1909, 1910, 1911 and 1912.

Q. Yes; but not to 1913? A. I simply cannot remember at this moment. I know that that amount which I then credited was the amount which was levied and appears in the record as such, but I cannot at this moment swear that I examined the assessment roll for that year.

20 Q. How did you figure, that a tax levy made in 1913 was an appropriation for the following year or for the current year? A. The levy of each year in December is supposed to provide for the necessities for the next year.

Q. But these tax appropriations were not made in December, were they? A. I think so.

Q. Were they? A. I think so.

30 Q. Well, do you know about it? As an accountant, examining town books, and— A. If I had the record before me I could say.

Q. —having to take into account the tax levies, etc., in order to make up a proper amount, don't you have to know the law with respect to what taxes are payable in certain given years, or how long the appropriation is to last? Aren't you supposed to take into consideration the law with regard to that? A. That would not affect the ledger balances about which you are questioning me, sir.

40

Paul Dudley Chase—Cross.

Q. Why not? A. Because it wouldn't.

Q. Why not? You are telling us how much money was on hand for a certain fund at a given time. A. Yes, I testified as to how much was on hand for that fund at a date.

10

Q. How do you know how much was on hand for that fund at the date unless you know that appropriation could be used in that year at that date—or do you mean simply that there was a credit to that fund on a certain date regardless of whether it could be expended? Is that what you mean? A. I have testified that the money was on hand for use on that date.

Q. Regardless of when it could be expended under the law? A. Regardless of whether it could be expended under the law.

20

Q. But the money was not on hand; the credit was on hand? A. I have testified that that money was to the credit of the police fund from authorized sources at that date.

Q. As a matter of bookkeeping? A. I have not testified whether it could be used, all of it, at that date or not.

24

Q. As a matter of bookkeeping it shows upon the books as a balance to the police fund as of that date? A. A correct balance as of that date.

Q. A pure matter of bookkeeping then? A. Well, I —

Q. Isn't it a pure matter of bookkeeping? A. A pure matter of bookkeeping—yes.

Q. Did you find any bank accounts to the credit of the police fund or special appropria-

40

John Handwerk—Direct.

tions kept apart from other appropriations?

A. No, sir; nor any other fund.

Q. What? A. Not for that or for any other fund. No special bank accounts are ever kept for funds.

10 Q. Did you examine the bank books? A. Certainly.

Mr. Walscheid: I suppose you are satisfied to use the copy in the book as his statement.

Mr. Dixon: Yes.

20

JOHN HANDWERK, SWORN.

Direct Examination by Mr. Walscheid:

Q. Where do you reside? A. Guttenberg.

Q. Were you appointed captain of police of the town of Guttenberg on the 19th day of December, 1913? A. Yes, sir.

Q. Did you at that time file an oath of office? A. Yes, sir.

Q. Do you remember before whom you swore to it? A. Before the recorder.

Q. What was his name? A. Spitz.

Q. Were six other men appointed with you at that time? A. Yes, sir.

Q. They are the other six plaintiffs in the police case here? A. Yes, sir.

Q. Did you see them do so? A. Yes.

40

John Handwerk—Direct.

Q. Also sworn to before Mr. Spitz? A. Yes, sir.

Q. What became of those oaths of office? A. I suppose they were given to the clerk.

Q. Were they or weren't they? A. I could not say whether—the recorder kept them—whether they were given to anybody or not I could not say. The recorder kept the oaths. 10

Q. Were you subsequently appointed a subordinate officer of the town? A. Yes, sir.

Q. Did you at that time also subscribe and swear to an oath of office? A. Yes, sir.

Q. Before whom? A. The recorder.

Q. And the same thing happened to those oaths of office? A. Yes, sir. 20

Q. How soon after your appointment as subordinate officers did you swear to your oaths of office as subordinate officers? A. How soon?

Q. Yes. A. Twelve o'clock noon.

Q. The same day? A. Yes, sir.

Q. Did you perform any work for the town of Guttenberg from the first of January, 1914, to the first day of May, 1914? A. Yes, sir. 30

Q. And did those other plaintiffs perform work during that time? A. Yes, sir.

Q. In what capacity did you work for the town then? A. As ordinance officers.

Q. Under your appointment? A. Yes, sir.

Q. Did you have any conversation with Councilman McIlreith? A. We recognized McIlreith as our chief—chairman of the police committee.

Q. Did you have any conversation with Councilman McIlreith in the month of April in relation to the performance of the work as police- 40

John Handwerk—Cross.

men under the police ordinance—April, 1914?

A. I could not say.

Q. Did you stop working as ordinance officers on May 1st, 1914? A. On May the first, yes.

10

Q. Why did you stop? A. Because McIlreith told me that the courts sustained us as regular police officers and we should go to work as regular police officers and not as ordinance officers any more from May 1st.

Q. Did you order the men to go to work as regular police officers from that time on? A. Yes, sir.

20

Q. From that time on did you work as regular police officers? A. Yes, sir.

Q. How long did you work thereafter as regular police officers? Q. What do you mean, after the first of January?

Q. After the first of May. A. From the first of May to the first of January.

Q. Did you work on from the first of January? A. Yes; we worked right straight on until some time in June.

30

Q. Well, you worked on until the ordinance was adopted repealing the ordinance creating the police department? A. Yes, sir.

Mr. Walscheid: That was on the 18th day of January, Mr. Dixon.

Mr. Dixon: I think so.

Q. You were working then as policemen with your associates? A. Yes, sir.

40

Cross Examination by Mr. Dixon:

Q. How long before May 1st was it you had

John Handwerk—Cross.

this conversation with Mr. McIlreith? A. What conversation?

Q. Didn't you recite some conversation you had with him, some orders he gave you? A. No, sir.

Q. He did not give you any order? A. He came in and give us—we recognized him as captain of police; he would come in and give us orders as chief of police, and we followed him to the best of our abilities.

Mr. Walscheid: Listen to the question.

(Question repeated).

A. He told us to go ahead and do our duties.

Q. As what? A. As ordinance officers.

Q. When did he tell you that? A. That was after the first of January, until the first of May, and then in April he—when the decision was rendered he told us I should get the men ready to go to work as police officers, after the first of May, but till the first of May we worked from January to May as ordinance officers.

Q. So you did not go to work as police officers until May 1st? A. No, sir; we worked as ordinance officers until May 1st.

Q. What was the difference in your work, any? A. The difference was, the salary was not as much and—

Q. I said work, not salary. A. We were just enforcing town ordinances as ordinance officers.

Q. What do you mean by that? A. Well, what do I mean, we—

Q. What, as policemen, did you refrain from doing when you were ordinance officers?

John Handwerk—Cross.

Mr. Walscheid: You do not mean that.

Q. What did you not do as ordinance officers that you otherwise would have done as a policeman?

10

Mr. Walscheid: I object to that as immaterial.

The Court: I will permit him to say what the change in his performance was from one character to another.

20

A. We just followed the town ordinance as ordinance officers, and as police officers we had a right to serve warrants all over. That is the only difference I can see.

Q. As police officers you had a right to serve warrants all over? A. To go all over and serve warrants.

Q. Where? A. To go to Hoboken, Union Hill, West New York, North Bergen.

30

Q. Oh, I see. Did you issue a general order for that, for the resumption of the duties as policemen? A. Yes, sir.

Q. A written order? A. Not a written order. We have got it down on the books there. You will find it there in the books there. Ours was the main work.

Q. Didn't you swear to your bills as patrolmen and police officers before May 1st? A. As ordinance officers we swore to them, yes, sir.

40

Q. See if this will refresh your recollection. I do not know if it is wrong.

John Handwerk—Cross.

Mr. Walscheid: What meeting is this?

Mr. Dixon: On motion of Councilman Miller the following claims were ordered paid on the following vote, etc.: Peter Handwerk, ten days as patrolman, to April 30, \$23. Stephen Bostwick, as patrolman, to April 30—that is before May 1st,—and so forth through the rest of them—ten days.

10

Q. Is that incorrect, or did you actually swear to claims as patrolmen ten days before May 1st? Or is your testimony all wrong about it?

Mr. Walscheid: Let him see the claims. This is the record of the Board of Council. They may have been mistaken.

20

Q. Does that refresh your recollection now about it? A. I could not say until I see the claims.

Q. Well, the fact is that you did not do any different work as a patrolman from that which you did as an ordinance officer, did you? A. I cannot say that I did.

30

Q. It did not make any difference to you except salary? A. Except salary, the same hours.

Q. You wore the same uniforms, didn't you? A. Certainly we wore the same uniform. It was the only uniform I had.

40

Q. And you resigned, didn't you, in December? You sent your resignation in to the Board as

John Handwerk—Redirect.

an ordinance officer, didn't you, in December, 1914? A. In December?

Q. Didn't you? A. Repeat that again.

10 Q. In December, didn't you send your resignation in as an ordinance officer? A. In December?

Q. Yes. A. No, sir; not in December.

Q. Did you resign as ordinance officer at all? A. From January last until May 1st as ordinance officers, then after that we were regular patrolmen.

Q. Did you resign in writing? A. Yes, sir.

20 Q. Sent in a written resignation? A. Resignation in the council meeting.

Q. You sent that in in December, didn't you? A. No, sir.

Q. You did not send that in in December? A. No, sir.

Q. Did you do any other work besides police work during that year 1914? A. Yes, sir.

Q. What other work A. I done painting work whenever I could get it.

30 Q. How frequently? A. Oh, in between spare hours. I had to do it to support my family.

Q. Weren't you on all the time? A. No, sir; I was not on from four to twelve.

Q. And the rest of the time you did painting? A. Whenever I could get anything to do, yes, sir.

Redirect Examination by Mr. Walscheid:

40 Q. And did all the other men work the same number of hours?

A. They all worked eight hours.

John Handwerk—Redirect.

Q. All worked eight hours a day? A. Yes, sir.

Mr. Walscheid: I offer in evidence the book of town ordinances of the Town of Guttenberg, the first ordinance being passed July 9, 1876—running down to date.

10

Mr. Dixon: What do you offer it for?

Mr. Walscheid: To show the existence of ordinances in the Town of Guttenberg. And it is admitted that is a general pamphlet compilation of these ordinances, isn't it? I do not think we will meet it.

20

Mr. Dixon: I object to that as immaterial until I know what the idea is.

Mr. Walscheid: The idea is to show that there were ordinances to be enforced.

Mr. Dixon: Oh!

Mr. Walscheid: There are such ordinances in that book.

30

Mr. Dixon: Oh!

Mr. Walscheid: And I suppose the Court does not care to read them all. Some of them deal with the Town of Guttenberg.

The Court: I will assume they are offered.

Mr. Dixon: We will admit that without the book, because when we come to print that as a record—we will admit the fact.

40

PLAINTIFF RESTS.

10

Mr. Dixon: I desire to offer in evidence the record in the mandamus case, of which we have a copy. We plead a prior suit; and I offer in evidence the— (Marked D-2).

Mr. Walscheid: I have the complete record in, and so that there will not be any doubt about just what there is in the mandamus suit, I will offer you the transcript now.

20

Mr. Dixon: It does not apply to both cases.

Mr. Walscheid: Yes; you made the same plea in both cases.

Mr. Dixon: Oh, no; it only applies to one case.

JOHN D. HESS, sworn.

30

Direct Examination by Mr. Dixon:

Q. What official position do you hold in Guttenberg? A. I am the treasurer of the Town of Guttenberg.

Q. And you have been so since when? A. Since January the 1st, 1915.

40

Q. Have you produced the town books here, showing the finances of the town? A. Yes; as far as I have got them.

Q. You had some difficulty to get them, did you?

John D. Hess—Direct.

Mr. Walscheid: I object to that.

A. Yes, sir.

Mr. Dixon: I think it is pertinent.

Mr. Walscheid: All right.

10

Q. You had to take court proceedings—mandamus? A. Yes, sir.

Q. Against whom? A. Against the former treasurer, Wm. J. Eypper.

Q. And the writ was issued?

Mr. Walscheid: I object to that as immaterial and irrelevant and not the proper way to prove the issuance of the writ.

20

The Court: I will sustain the objection on the latter ground.

Q. What books did you get? A. I got the cash book, I got quite some old books; that is, the disbursements; the cash receipt book, the ledger is missing.

Q. The ledger is missing? A. Yes, sir.

30

Q. Was he commanded to produce the ledger?

Mr. Walscheid: I object to that as calling for the contents of a writ.

The Court: I will sustain the objection to it.

Mr. Dixon: They said there would not be any formal objections.

Mr. Walscheid: There will not be to anything that is material. I do not think that is.

40

John D. Hess—Direct.

Mr. Dixon: I want to account for the absence of that.

10 The Court: Well, the general impression here is, and I will find it as a fact, if there is no objection to it, that the ledger was stolen. Everybody says that here.

Mr. Dixon: Everybody says it was stolen.

The Court: I will assume that is the fact and that is why it is not here then.

20 Q. Now, so far as you know, were all the moneys of the town turned over? A. As far as I know.

Q. And from these books that were turned over to you, have you ascertained whether or not there was what was known as a police fund prior to your going into office? A. Well, I see there was a transfer made October the 28th, 1914, from the license fund to the police fund—four thousand dollars; but is nothing further.

30 Q. It was a mere bookkeeping entry, was it? A. An entry.

Q. Did you find any other account of that four thousand dollars any other way than that? A. No, sir.

Q. Than by this resolution? A. No, sir.

40 Q. How were the funds of the town kept up to the time that you went into office, the actual moneys that came into the town treasury; how and where were they kept? A. As far as I could see in those two books they are all right,

John D. Hess—Direct.

but without the ledger I don't know of anything wrong.

Q. But where were the funds kept?

Mr. Walscheid: In what bank, do you mean?

10

Q. In banks A. Oh! yes.

Q. Any by any designated names? A. The general account is kept in the New Jersey Trust Company, Union Hill.

Q. That is called the general account? A. General account, town account.

Q. Is there any special account kept anywhere? A. We keep an account down in Hoboken, the First National Bank, that is the bond and coupon account.

20

Q. How about your school account? A. I was not custodian of school money. I am now though.

Q. Where was that kept? A. That is kept in the Guttenberg bank.

Q. As a school account? A. As a school account.

30

Q. Did you find or do you know of any police account in the books? A. No, sir.

Mr. Walscheid: You mean in the banks?

Mr. Dixon: In the banks.

Q. How much money was turned over to you when you assumed office?

40

Daniel Herrmann—Direct.

Mr. Walscheid: On January 1st, 1915?

Mr. Dixon: Yes.

Mr. Walscheid: I object to that as immaterial.

10

The Court: I do not see any materiality to it.

(No cross examination).

DANIEL HERRMANN, SWORN.

Direct Examination by Mr. Dixon:

20

Q. You are the mayor of the Town of Guttenberg? A. Yes, sir.

Q. And have been such for how long? A. Two years; since the first of January, 1914.

Q. Were you a member of the council before that? A. No.

Q. Under the law your signature is required for the disbursement of municipal funds, is it not? A. Yes, sir.

30

Q. Did you know of the claims that were presented from time to time by the so-called police officers or ordinance officers? A. Yes, sir.

Q. They came before you for your signature or approval? A. They did not come before me for my signature.

40

Q. For your approval? A. Before me for a vote on the passage of claims—came up for a vote.

Q. They could not be paid without your sig-

Daniel Herrmann—Direct.

nature? A. No.

Q. The moneys could not be withdrawn from the fund without your signature; is that right?

A. Yes.

Q. And did you not pay them? A. I did not.

10

Q. Why did you not pay them?

Mr. Walscheid: I object as immaterial why he did not pay them.

A. Do you want me to answer?

Mr. Dixon: Not yet.

The Court: I do not see the relevancy of that, his reason for not signing. I cannot see what effect that would have.

20

Q. Did you observe the conduct of these so-called police officers during the year 1914—

Mr. Walscheid: I object.

Q. —as mayor of Guttenberg—

Mr. Walscheid: I object to that.

Mr. Dixon: I have not finished it.

30

Q. —so as to acquire sufficient knowledge as to the work that they performed, to know whether or not they did perform police duty for the town?

Mr. Walscheid: I withdraw my objection.

A. Yes, sir.

40

Q. What did you ascertain so far as their performance of police duty was concerned? A. Do

Daniel Herrmann—Direct.

you mean now ordinance officers' duty as they called it, and police duty?

Q. Yes. From your observation of them and what they did, can you distinguish between the one title and the other from their work?

10

Mr. Walscheid: I object as immaterial whether he can distinguish or not.

Q. Was it distinguishable? A. May I answer, Judge?

20

The Court: Just wait a minute. I think he may answer whether he could distinguish between the duties that he saw them perform during the while that they were acting as ordinance officers and during the while that they were acting as policemen. I do not see any objection to that.

A. I do not think there was any difference.

Q. What did they do, if anything? A. In doing their duty?

30

Q. Yes; in the line of police work for the town? A. Why, they patrolled through the town—when they did patrol.

Q. What? A. I say they patrolled through the town when they did patrol, but they didn't do continual duty as they claimed by their bills. When they patrolled, yes.

Q. And they presented the bills for services for each day of the year, did they not? A. Every day, yes, sir.

40

Daniel Herrmann—Direct.

Q. Every day of the year? A. Yes, sir.

Q. In one form or another. Are these some of the bills they presented? A. Yes, sir.

Q. Now did you investigate so as to ascertain whether the claims were true in fact for work done during each day of the year or to be done? A. Yes, sir.

10

Mr. Walscheid: I desire to enter an objection to that on the ground it is immaterial. That matter rested with the board, and while of course, he, as a member of the board had a right to investigate—

The Court: I think it is a material fact as a preliminary fact, because it tends to show what his knowledge was as to the performance of their duties so as to lend more credence to his testimony as to what he actually did see them do or neglect to do.

20

Objection withdrawn.

Q. Does that apply to each one of these plaintiffs, to wit, that they did not work every day in the year as they claim salary for? A. Yes, sir.

30

Q. Did you examine to ascertain whether or not they did other than police work? A. Yes, sir.

Q. And what did you ascertain the fact to be? A. I found that Captain Handwerk worked at house painting and he had Peter Handwerk, his son, and Christopher Barth helping him, and I

40

Daniel Herrmann—Direct.

10 found through the records kept by the captain that George Bell, Officer Bell, was marked absent from the time book of the police force, also Stephen Bostwick, and William Tallman, and Sergeant Buckley, for different days—numerous days. I also found that Peter Handwerk and William Tallman went on an outing, on I believe it was the Heiser Association at Shadyside in the year 1914, on the 12th of July, without permission from the captain or permission from the—

Mr. Walscheid: I object.

20 Q. I don't care so much about that. I want to know about how much of the time they did not work at all on the police force. A. I could not tell you exactly all the time they did not work; I did not follow it up every day.

Q. You did not count the number of days?
A. I did not.

Q. About how much of the time do you know that they did not work?

30 Mr. Walscheid: I object. It calls for a conclusion.

A. I could not say.

Mr. Walscheid: Withdraw the objection.

40 Q. What other work did any of them do besides police work? A. Sergeant Buckley did quarry work—at his former trade.

Daniel Herrmann—Direct:

Q. During this time? A. During the year 1914.

Q. How long was he employed at that, do you know? A. He was probably off a month more or less; I could not say exactly.

Q. Did he put bills in just the same? A. Put bills in just the same. 10

Q. And you therefore refused to sign them? A. Yes, sir.

Q. You did not sign them, did not approve them? A. I did not sign the vouchers.

Q. You would not sign the vouchers. Have you examined the books to find out whether there was any appropriation to a so-called police account, and whether there was any police account on the books? 20

Mr. Walscheid: What do you mean by police accounts?

Mr. Dixon: I do not know.

A. You would not find them in those books.

Mr. Walscheid: I have not said the police account; I said police fund, police appropriation. 30

A. There was no appropriation for the year 1914 in any police fund.

Mr. Walscheid: I ask that that be stricken out as a conclusion by this witness. 40

The Court: I think that is true. I

Daniel Herrmann—Direct.

don't think there is any proper foundation laid to show that he could ascertain that with any degree of expertness.

10

Mr. Dixon: He has examined the books. They produced a witness who said he examined the books and he told about a police fund.

The Court: But he first qualified as an expert on bookkeeping. Mayor Herrmann has not yet shown expert qualification. At any rate you have the books in evidence.

20

Q. These are the books you refer to, all these books and other books? A. Well, those books would not show an appropriation or a tax ordinance.

Q. Where are the books that would show it? A. Why, the minutes would show the adoption of an ordinance with the amounts appropriated for each purpose.

30

Q. Where are they? Where are the minutes? A. On the table (indicating).

Q. What do you refer to? You said there was no appropriation, which the Court says you cannot testify to. What do you refer to?

40

Mr. Walscheid: To shorten this matter: doesn't Mayor Herrmann mean to convey that during the year 1914 no ordinance was adopted by the Town of Guttenberg making tax appropriations?

A. Yes; I mean to convey that; and I mean to

Daniel Herrmann—Cross.

convey that the ordinance that was adopted in 1913 could not be legally spent in 1914.

Mr. Walscheid: Well, that is not for you to say.

10

A. Well, I know there was no appropriation or no ordinance passed in 1914 of any kind for town purposes.

Q. For police or otherwise? A. For police or any other purpose.

Mr. Dixon: That is the fact. Cross examine.

20

Cross Examination by Mr. Walscheid:

Q. And no appropriation ordinance was passed in 1914 because you, as mayor, refused to sign it A. Yes, sir.

Q. The Board of Council on two distinct occasions passed such an ordinance? A. Yes, sir.

Q. And you were not satisfied with the figures in it; is that right? A. Yes, sir.

30

Q. So you refused to sign it? A. Yes, sir.

Q. And therefore Guttenberg in the month of December, 1914, was supposed to go without tax moneys for that year, is that right? A. Yes; they couldn't raise any.

Q. But as a matter of fact they did, didn't they? A. No.

Q. As a matter of fact your tax roll for the year 1914 does show the appropriations and they were collected? A. No, sir. They show

40

Daniel Herrmann—Cross.

appropriations for state school and county tax, and that is what was collected, but not—

Q. Have you that tax roll here? A. Yes.

10 Mr. Dixon: May I ask a question?

By Mr. Dixon:

Q. In the year 1913 or 1912 or 1914, was there any appropriation voted by the voters of the Town of Guttenberg? A. No, sir.

20 Mr. Walscheid: I will concede that there was not any appropriation voted in the Town of Guttenberg during any period affecting this case.

Q. For police purposes?

Mr. Walscheid: For any purpose. That is the way I will make the admission—for any purpose, beginning with 1908, down to date. Is that a satisfactory admission?

30 Mr. Dixon: Yes.

By Mr. Walscheid:

Q. Does that tax roll for the year 1914 and 1915 show what the assessor was to levy? A. I do not know. It should show the amounts in the front of the book.

40 Q. They usually show it in the back. A. Yes; I guess it does. This would show (indicating). There is the rate and—there is somebody's bill—there is the amounts, yes. "Local, none."

Daniel Herrmann—Cross.

Mr. Walscheid: I offer in evidence page 93 of the book, tax roll for the year 1914-15, which shows that no local tax levy was made for that year.

(Designated P-9).

10

Q. And that was brought about solely by reason of the fact that you refused to sign the tax ordinance which the board of council had passed? A. Yes, sir.

Q. And in the fall of the year 1913 there was raised, according to the tax roll, for 1913-14, an appropriation for local purposes, wasn't there, for the town? A. Yes; I guess so. That was before I was in office.

20

Q. And that is shown on page 58 of the tax roll in question as \$41,300, isn't it? A. Yes, sir.

Q. That money came in by the tax levy in the fall of 1913, didn't it? A. Yes, sir.

Q. And that is the sum which is identical with the tax ordinance which has been introduced for the year 1913, isn't it? A. I do not know what has been introduced.

30

Mr. Walscheid: I offer in evidence the tax roll of 1913-14, page 58, showing the amount of the local appropriation of \$41,300.

(Designated P-10).

Q. Now the only duty you say you saw these men perform was patrolling the streets, is that right? A. Yes, sir, that is—they were patrolling

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Daniel Herrmann—Cross.

the streets under "ordinance officers" and they were patrolling the streets under—

Q. No matter under what authority they were patrolling; they were patrolling? A. Yes; that is right.

10

Q. And they commenced patrolling the 1st of January, 1914? A. Nineteen fourteen, yes.

Q. Continued to patrol until January 15, 1915, and for some time thereafter? A. January, fifteen, yes, sir.

Q. During all that time you were mayor of the town? A. Yes.

20

Q. Did you ever give them any orders to do any specific piece of work? A. No, sir.

Q. Did you ever give them the directions to perform any particular duties under their appointment? A. No, sir.

Q. (by the Court) You had no other officers in the town? A. No, sir.

Q. You received no police protection from any other officers in any shape whatsoever during that period of time? A. No, sir.

30

Q. You have referred to a record kept by Captain Handwerk. Is that record here? A. Yes; that record is there.

Q. That was a record not kept at the request of the town, was it? A. No; not while I was in the board.

Q. And you were in the board during all the time covered by these claims? A. Yes, sir.

40

Q. And you found this record in the police room, didn't you A. In the clerk's room. The police occupied it.

Daniel Herrmann—Cross.

Q. And the town has never even paid for this book, have they? A. I do not know.

Q. Well, you know they haven't, don't you?
A. I do not. I do not know where the book came from. I never saw a bill for it.

10

Q. And that book seems to run from January 9, 1914? A. April the 15th.

Q. April the 14th, isn't it? A. Well, from some time in April, 1914, down through January—March and April, 1915? A. April—

Q. It goes down to the time when the Court of Errors affirmed the ordinances? A. No, it doesn't.

Q. Oh; you took it away from them? That's right. It goes down to April, 1915? A. Yes.

20

Q. Then you took this book away from the captain? A. Yes.

Q. So that after that he could not keep this record any more? A. No, sir.

Q. And your information as to the time these men worked is taken from these records, isn't it—this book? A. Yes, sir.

Q. You have no way of knowing that this record is false? A. No.

30

Q. And you are satisfied that it is right? A. Well, I have no way to verify it.

Q. And you used this book subsequent to the 15th day of January, in the formulation of charges for the removal of the officers for failure to perform duties on certain days? A. Yes, sir.

Q. So that you were satisfied of its correctness, is that so? A. Yes.

40

Daniel Herrmann—Cross.

Q. And this book for the period in question shows daily work by each one of these men excepting on certain instances where they are marked off as not having reported for duty; isn't that so? A. Yes.

10

Q. And how many instances do you think there are in this book where these men have been marked off for duty; how many instances has Handwerk been marked off duty for instance, Captain John Handwerk A. I would have to go through the book to see.

Q. Don't you know? A. No; I have not counted them up.

20

Q. Have you ever made an examination of it? A. Yes, I have.

Q. Does it amount to ten days? A. I don't know.

Q. Well, does it amount to fifteen days? A. I would have to answer that the same way; I do not know what it amounts to.

30

Q. Yet you have taken this book from the captain for the very purpose of examining into the question of duty performed by these men, and as a result of that examination you discovered that certain men were off duty and preferred charges; isn't that right? A. Yes, sir.

Q. Now isn't it a fact that not one of these men, according to this record, was off duty as much as ten days during the whole period of time that we are suing for? A. No, sir.

Q. Any of them more than that A. Yes, sir.

40

Q. Which one A. Why, I believe Officer Bell was off more than ten days.

Daniel Herrmann—Cross.

Q. How much were they off A. Two weeks at a time.

Q. How many times? A. I could not say.

Q. Was it a month? A. Oh, it was more than a month between probably.

Q. Are you figuring when they were off on leave? A. Here (indicating) is a week off. There is no leave that we can see. Well, there are probably some in here on leave, but here is Buckley marked off five days in a week and continued six days. There is eleven days at one time you can see.

10

Q. Eleven days at one time for Mr. Buckley. And at that time you know that he reported sick, don't you? A. I believe he testified to that effect. I do not know.

20

Q. Yes; and Captain Handwerk testified to that too, didn't he? A. If my memory is right I think he did.

Q. Yes. I haven't got those records. So far as this painting work is concerned how many times did you see C npathHaianderwkaSSHR times did you see Captain Handwerk painting? A. Half a dozen or more.

30

Q. And on each of these days when you found that he was painting he had also been doing police work, hadn't he? A. Well, I don't know; not while he was painting.

Q. Of course not while he was painting. He might have been doing police work at night, mightn't he? A. Yes; he might.

Q. And isn't it a fact that Captain Handwerk was always on duty at night? A. His time for

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Daniel Herrmann—Redirect.

duty according to this book was from four until twelve, I believe.

Q. From four in the afternoon until twelve?

10

A. From four to eight he starts in here, working on half time, I guess, as this record shows; and then from eight to twelve. He had various hours on duty according to this book.

Q. According to the book he shifted about. He did his eight hours during various parts of the day? A. Here it is written down from four to twelve. No; he does not shift around after.

20

Q. He stays on from four to twelve? A. Yes.

Q. That is from the afternoon at four until twelve o'clock at night? A. Yes, sir.

Q. How many times did you see Buckley working in a quarry? A. How many times I saw Buckley? I have not seen Buckley myself.

Q. You did not see Buckley working in the quarry at all, then? A. No, sir.

Q. Then why did you testify that he did? A. Why, I was told so.

30

Q. Oh! You were told that?

Mr. Dixon: He said he made inquiries.

Mr. Walscheid: I offer this book in evidence, being a book entitled "Police time book."

(Designated P-11).

Redirect Examination by Mr. Dixon:

40

Q. Mayor, in this tax budget raised in 1913 the police appropriation was only— A. \$2900.

Daniel Hermann—Cross.

Q. That is the one that Mr. Walscheid says—

Mr. Walscheid: That is the old one; \$2,900 to be raised by taxation.

Mr. Dixon: \$2,900 appropriated.

Mr. Walscheid: No to be raised by taxation. 10

Q. Was there any other appropriation that you know of in that year besides? A. No, sir.

Q. What did the salaries as provided for by the police ordinance amount to A. By the year it was \$6,100.

Recross Examination by Mr. Walscheid:

20

Q. Your testimony in regard to the time when these men were not working except in the one instance which relates to the time when you saw Captain Handwerk painting houses, is all from information that you gathered, isn't that so, either from these books or from other sources? A. Yes, sir.

Q. The only personal knowledge— A. Well, 30
Captain Handwerk and his son and Christopher Barth, I saw them.

Q. You saw them working on houses on some occasions? A. Yes, sir.

Q. With the exception of that it is all gathered information? A. Yes.

40

Thomas Farrell—Direct.

THOMAS FARRELL, SWORN.

Direct Examination by Mr. Dixon:

10 Q. What is your business? A. I have got a couple of teams of horses.

Q. You live in Guttenberg? A. Yes.

Q. You lived there in 1914? A. Yes, sir.

Q. Do you know any of these plaintiffs, police officers? A. I know them all.

20 Q. During the year 1914 what, if anything, do you know about any of them working at anything else but police duty? A. Well, I used to be around the roads, you know, a great deal, driving up and down, and I used to see these fellows walking around with their overalls on—whether they were working or not I don't know; but they didn't look as if they—they looked like as if they were working painting.

Q. Who did you see at that? A. I seen the two Handwerks and Barth and I see Buckley working in the quarry. I worked over there along with him.

30 Q. How long did he work in the quarry? A. Well, I should judge—I was carting building stone, and I had to pass up and down the street where he was working. Well, I should judge about—I worked there a week, but he was there about two weeks before I started to work.

Q. Was he there when you finished? A. Yes, sir.

40 Q. What part of the year was that A. It was 1914, around I should say, in either August or September, I would not say for sure.

~~Thomas Farrell—Cross.~~

~~August Edelman—Direct.~~

Cross Examination by Mr. Walscheid:

Q. On those days that you saw Buckley working in the quarry you would also see him doing police duty, wouldn't you A. No, sir. 10

Q. You did not see him? A. No, sir.

Q. And as to these fellows whom you say were painting, you say you did not see them actually painting, you saw them walking around in overals? A. I saw Handwerk painting on Bergenline avenue.

Q. Which Handwerk? A. The captain.

Q. You saw him painting on that house? A. Yes. 20

AUGUST EDELMAN, SWORN.

Direct Examination by Mr. Dixon:

Q. Where do you live? A. Guttenberg.

Q. How long have you lived there? A. Twenty-six years. 30

Q. Do you know these plaintiffs, the police officers? A. Yes, sir; I know them all.

Q. During the year 1912 do you know of your own knowledge? A. Yes, sir.

Q. —of any of them doing any work other than police work in the town of Guttenberg? A. Yes, sir. He did my paint work for two houses.

Q. Who? A. Mr. Handwerk. 40

Q. Painted four houses for you? A. No, two; a new one and an old one he painted.

August Edelman—Cross.

Q. He painted two houses for you? A. Yes, sir.

Q. How long did it take him to do it? A. I did not count the days, you know; he done it by contract.

10 Q. Did he do it alone or— A. No; there was sometimes two, sometimes one, and sometimes three, just about the same—I didn't like to look at them or count them.

Q. Who painted with him; who helped him? A. Sometimes his son and sometimes Mr. Barth here.

20 Q. Do you know how long it took to do the whole job? A. No. I did not count the days. He had it by contract.

Q. Did it take several days A. Yes; sure.

Q. Some time? A. Yes, sir.

Q. It took some time? A. Sure.

Q. Some time? A. Yes, sir.

Q. It took some time? A. Sure.

Q. Where were these houses? A. That is Jackson and 26th street.

30

Mr. Dixon: In Guttenberg?

A. Yes, sir.

Q. Did you ever see them doing any other work for anybody else. A. I cannot say that. I got to work in my shops what I got and I can't tell.

40

Cross Examination by Mr. Walscheid:

Q. You have also seen all these men doing

August Edelman—Redirect.

Harold Ziedlich—Direct.

police duty? A. I seen some times police in uniform. I can't say who they was.

Q. And it took Mr. Handwerk much longer to paint these houses of yours than you thought it ought to have taken? A. No; he—well, he take his time; he ain't in such a hurry.

10

Q. You let him take his time? A. Sure.

Q. He would work a day now and then lay off for a few days? A. Yes.

Q. And then work another day? A. Yes; and sometimes he would go two days.

Q. And in that way your houses were gradually painted? A. Yes.

20

Redirect Examination by Mr. Dixon:

Q. Would he paint all day or only part of the time? A. No; sometimes he would paint all day and sometimes he would take off. I didn't have anything to say when he had his contract.

30

HAROLD ZIEDLICH, SWORN.

Direct Examination by Mr. Dixon:

Q. Where do you live? A. In Guttenberg.

Q. Do you know these plaintiffs, the police officers? A. I know them all.

Q. During the year 1914 did you see any of these police officers doing other work than police

40

Harold Ziedlich—Cross

duty in Guttenberg? A. When my house was built they was painting that house.

Q. Who did that? A. That was in the month of July or August, 1914.

10 Q. Who painted it? A. John Handwerk and Pete.

Q. Peter Handwerk? A. Yes, sir.

Q. Anybody else? A. Of course I was not home right along; I don't know who was helping him.

Mr. Walscheid: Did you see him painting?

20 A. I seen him painting.

Q. How long did it take him to do the job?

A. I could not tell you exactly because they was some time, doing little job inside and sometimes a little done outside.

Q. Did they do both inside and outside? A. Yes, sir.

30 Q. About how long did it take to complete the job? A. I could not tell you.

Q. About how long was it? A. About five or ten days, I don't know.

Q. What time did they do the work, what hours? A. During the day time.

Cross Examination by Mr. Walscheid:

40 Q. You live right opposite to Captain Handwerk? A. Right opposite, yes.

Q. And you have seen Captain Handwerk go out on duty, haven't you? A. I did not watch him what he doing.

Adolph Rominger—Direct.

Q. You never watched him? A. I never was much interested in that politics.

Q. You saw him go out on duty on the days that he had done painting work in your house, didn't you? A. That's all I know, he was painting my house. 10

Q. On the days you have seen him doing painting work you have seen him on duty in the evening, haven't you? A. I could not tell you, I never watching him or so—I never was interested.

ADOLPH ROMINGER, SWORN. 20

Direct Examination by Mr. Dixon:

Q. You live in Guttenberg? A. Yes, sir.

Q. Do you know these plaintiffs, the police officers there? A. Yes, sir; I know them all.

Q. During the year of 1914 did you see any of them working at anything besides police work in Guttenberg? A. This Peter Handwerk was working in my house. 30

Q. Doing what? A. Painting.

Q. How long a time? A. Well, Jacob Brothers had the job, so he was working I guess three or four or five days, I could not tell you, something like that.

Q. Under them? A. Yes, sir.

Q. Any of the others did you see? A. The others I seen some working too, passing with overalls on. 40

Q. Who else did you see doing that work? A.

Adolph Rominger—Direct.

Mr. Handwerk, and I seen Barth passing with overalls on.

Mr. Walscheid: With overalls on?

10 A. Yes, sir.

Q. Working there? A. I do not know where he worked; I only saw them passing there.

Q. Did you see them working anywhere? A. No, I did not.

JACOB HEINZ, SWORN.

20

Direct Examination by Mr. Dixon:

Q. You live in Guttenberg? A. Yes, sir.

Q. Do you know these plaintiffs, the police officers? A. Yes, sir.

Q. Did you see any of them during the year 1914 doing work other than police work? A. Well, I have seen them once in a while, but I
30 never paid any attention to it.

Q. Whom have you seen doing any work than police work?

Mr. Walscheid: Not walking around.

A. I can't say I have ever seen them working.

Q. Have you ever seen any of them working
40 in a trench, digging trenches? A. Yes, sir.

Q. Didn't you see any of them digging a sewer? A. Yes, sir.

Jacob Heinz—Direct.

Q. Whom did you see doing that? A. Mr. Buckley.

Q. What sewer was he working in? A. I had a connection made in my own house to the sewer and he worked there.

Q. And he worked there at your property? A. Yes, sir. 10

Q. How long did he work there? A. The job lasted about three weeks, but I cannot tell you whether he was there every day or not. That is something I cannot tell you.

Q. He worked during the whole job, didn't he? A. I cannot say that he was there every day though. 20

Q. But he was on the job until it was finished? A. He was on the job, but he did not have the job; he did not have the contract.

Q. He was hired by somebody else? A. I suppose so.

Q. What work did he do? A. He blast rocks and excavating, you know.

Q. During what hours did he do it? A. Well, you know, I am in business and leave in the morning—but when I came home I seen him. 30

Q. What time did you get home? A. Sometimes I get home at twelve and sometimes at seven o'clock at night. I am in the trucking business; and I seen him there quite often.

Cross Examination by Mr. Walscheid:

Q. You are in the trucking business? A. Yes, sir.

Q. And you leave home at seven o'clock in the morning? A. Sometimes at four. 40

Jacob Heinz—Direct.

Q. Where is your place of business located?

A. Up in Guttenberg, 24th street.

Q. Do you drive your trucks yourself? A. My sons—

10 Q. I am asking about you. A. I am driving sometimes; sometimes the son is driving.

Q. And you do not get back ordinarily until seven at night? A. Sometimes—

Q. Most of the time? A. Not most of the time.

Q. You generally get home at twelve, at the noon hour? A. Yes, sir.

A. Nobody was working then at the noon hour? A. I don't know—

20 Q. You never saw anybody working at the noon hour? A. No, sir, because I was not at the job there; I would be at my own home.

Q. And when you would get home at night there would be no one working there? A. No, sir.

Q. So that you never saw Buckley working there? A. Who said that?

30 Q. I am asking you. A. I seen him about ten times at least.

Q. You say he was not working for you? A. Not for me.

Q. You have not paid him for this work? A. No, sir.

Q. Nor have you paid anyone else? A. I paid the contractor, yes, sir. I am glad of it I did.

40 Mr. Dixon: I do not think of anything else to put in at this time. I make a formal offer of all the records.

DEFENDANT RESTS.

Mr. Walscheid: The only thing I might have any rebuttal on is on the effect of that ambiguous resolution.

10

The Court: The resolution that was read by Mr. Dixon in the early part of the case?

Mr. Walscheid: Yes; and I haven't the witnesses on that point—if that should become material. I do not think myself it will, because it does not call for any resignations by anybody. They then were appointed for a year, and it does not ask for their resignations, it merely calls in all special officers' badges. If that should become material I should like permission to prove through the board of council that at that time there was a distinction between regular officers and special officers, the regular officers working for pay and the special officers working only on such occasions as the board of council called them in and then they would receive a per diem compensation. Outside of that I have nothing to offer on questions of fact.

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30

Mr. Dixon: I want to make whatever motion is appropriate. I do not know exactly what kind of a motion is appropriate.

The Court: You want to make that on your briefs.

40

Mr. Walscheid: I suggest that we both

Defendant Rests.

10

reserve the right upon our briefs to make such motions and to move for such specific things as we think we are entitled to so that we can note objections to them. And so far as this point is concerned, involved in this one resolution, I would like your Honor to allow me until next Friday—

The Court: I will not be here next Friday; I will be in Morristown. I will give you the opening day of the term, but you have to give Mr. Dixon notice if you intend to put in any evidence.

20

Mr. Walscheid: As to what the intent was.

Mr. Dixon: This will be adjourned then until the opening day of the term?

The Court: Yes.

30

40

EXHIBIT.

RESOLUTIONS.

Upon motion of Councilman Schultz, seconded by Councilman McIlreith, the following resolutions were unanimously adopted.

10

Ayes: Councilman McIlreith, Muller, Schultz, Schnyder, and Mayor Herrman.

Nays: None. Absent: None.

"Resolved, that Charles Rademacher and Christopher Bardt be and are hereby appointed special subordinate officers, or agents, without pay. Their duties to consist of enforcement of ordinances, and such other duties as the Town Charter provides, and be it further resolved,

20

"That all special officers' badges (with the exception of the two just issued), be and are hereby recalled."

This is to certify that the foregoing resolutions is a true copy of resolutions appearing in the Record Minute Book of the Board of Council, Town of Guttenberg, County of Hudson. Minutes of January 5th, 1914.

30

Record Book of Years, 1913, 1914.

Attest:

WILLIAM J. BRAMLEY,
Town Clerk,
Guttenberg, N. J.

40

Samuel McIlreith—Direct.

(HANDWERK et als vs. GUTTENBERG).

(Case Re-opened Friday, February 26, 1916).

1.0 SAMUEL MCILREITH, SWORN.

Direct Examination by Mr. Walscheid:

Q. Where do you reside? A. Guttenberg, 18 25th street.

Q. Were you at any time a member of the Board of Council of Guttenberg? A. Yes.

Q. During what years? A. 1913, 1914 and 1915.

2.0 Q. In the year 1914 were you a member of any particular committees? A. Yes.

Q. What committees? A. Police committee, fire committee.

Q. Who were your associates in the police committee? A. Councilmen Miller and Schultz.

Q. Were you chairman of the committee? A. Yes.

3.0 Q. You were present at a meeting of the Board of Council held on the first day of January, 1914, weren't you? A. Yes, sir.

Q. You were present at that meeting and took part in the adoption of the resolutions appointing John Handwerk, Stephen Bostwick, John Buckley, Peter Handwerk, William Tallman and George S. Bell subordinate officers or agents of the town? A. Yes, sir.

Q. At the salary fixed in the resolution? A. Yes.

4.0 Q. On January 5, 1914, there was a meeting

Samuel McIlrieth—Direct.

held by the Board of Council, was there not? A. Yes.

Q. And at that meeting the following resolution appears to have been adopted: "Resolved that Charles Rademacher and Christopher Barth be and are hereby appointed special subordinate officers and agents without pay, their duties to consist of the enforcement of ordinances and such other duties as the town charter provides; and be it further resolved that all special officers' badges with the exception of the two just issued be and are hereby recalled." That resolution was adopted? A. Yes. 10

Q. To what did the words "special officers' badges" refer— 20

Mr. Dixon: I object.

Q. To what officials, if any, of the town?

Mr. Dixon: I object. He is now interpreting the minutes.

The Court: The question permits him to give his conclusion. 30

(Question withdrawn).

Q. At the time of the adoption of this resolution were there such things as special officers' badges in existence in the town of Guttenberg?

Samuel McIlrieth—Direct.

A. Yes.

Q. And who at that time held such badges?

A. Numerous fellows; really I could not tell.

Q. How had they been issued—if issued? A.
By former boards.

10

Mr. Dixon: Were they issued by resolution?

A. I could not tell you. By former boards, I know that; I know they had them. It was our object to get them in.

Mr. Dixon: Then you do not know?

A. That they had them, yes. We were anxious to get them in, and we could not get them in.

20

Q. How many of those badges do you think were out at that time? A. I could not tell you, Counsellor; quite a number of them.

Q. Had any such special officers' badges been issued in the year 1913, in which you had been a member of the board? A. No.

30

Q. Had any such special officers' badges been issued in the year 1914 prior to the adoption of this resolution, between the first of January and the 5th of January, 1914? A. Only ordinance officers.

Q. Had any special officers' badges been issued? A. No.

Q. You signed this resolution, did you not? A. Yes.

Q. That is your name under it? A. Yes.

Q. And Joseph Schultz also signed it? A.
40 Yes.

Q. And Jacob Muller signed it? A. Yes.

Samuel McIlreith—Direct.

Q. They are the members of the police committee with you? A. Yes; they were.

Q. And was this resolution discussed by you before it was introduced? A. Yes.

Q. And what did you, the gentlemen of the police committee, in introducing this resolution, intend to accomplish by that portion of it which says, "Resolved that all special officers' badges with the exception of the two just issued be and are hereby recalled"? 10

Mr. Dixon: I object as incompetent.
(Objection sustained).

Q. Mr. McIlreith, referring now to the words, "Resolved that all special officers' badges be and are hereby recalled" was there any discussion between you gentlemen before the adoption of that resolution in relation to that resolution? A. Yes. 20

Mr. Dixon: Who were the gentlemen?

Mr. Walscheid: The gentlemen who signed it; the members of the police committee who introduced it. 30

A. Miller, Schultz, McIlreith.

Q. What was that discussion? A. Just as I stated before, there was a number of special officers, men holding badges, in the town.

Mr. Dixon: One moment. Thas was a board meeting, wasn't it? A. Yes. 40

Mr. Dixon: And there were other mem-

bers of the board present at the time of the discussion, were there not? A. No; we discussed that in going over to the town hall.

Mr. Dixon: Before you got to the town hall? A. Yes; at the meeting, too.

10

Mr. Dixon: Did you discuss it at the meeting or going to the town hall? A. Yes, we always used to talk over those resolutions.

Mr. Dixon: Well, did you discuss it at the meeting at which it was passed? A. Yes.

20

Mr. Dixon: Who were present at the time that was passed? A. The full board: Mayor Herrmann, Councilmen Schneider, McIlreith, Schultz and Miller.

Mr. Dixon: I object to any testimony of any discussions between these gentlemen going over to the board.

The Court: Yes. I think it must be confined to what occurred in the board.

Q. What was said, if anything, in relation to this resolution in the board as you remember it?

30

A. Well, I could not recall the discussion exactly.

By the Court:

Q. Well, did your committee make a report to the full board at the time this resolution was presented for passage or did you indicate what the purpose of it was? A. The way that we used to do that—

40

Q. I don't care what you used to do. Just tell what you did. A. The resolution was brought up and argued on.

By Mr. Walscheid:

Q. The resolution was brought up and argued on? A. Argued on and put to a vote.

Q. And did you gentlemen of the police committee present the resolution? A. Yes.

Q. Report the resolution? A. Report the resolution of the board. 10

Q. And did you tell the board the reason why you wanted the resolution passed? A. I believe we did.

Q. What did you tell them in relation to this portion of the resolution about special officers' badges? (No answer).

By the Court:

Q. Did you tell what the object of the resolution was, what the purpose of its passage was? 20
A. I am not sure, but I think we did.

Q. What did you say to them, if you can recall it, about it? A. I could not say. If we said anything it would be to bring in all the old badges that was outstanding. That is as much as I can recall what we said. There were a number of badges out in that town for years and years, and we were anxious to get them in. 30

By Mr. Walscheid:

Q. Well, will you say that you did or did not discuss that in the board? A. Yes.

Q. You did discuss it in the board? A. I am pretty sure we did.

Q. At the adoption of the resolution? A. Yes, sir.

Q. Now subsequent to the adoption of this resolution did the men who were appointed subor- 40

Samuel McIlrieth—Direct.

dinate officers and agents under the resolution of January 1st, namely, the six men whom I have mentioned to you as having been appointed at a salary—did those men continue to work for the town? A. Yes, sir.

10

Q. As subordinate officers? A. Subordinate officers.

Q. For how long a period of time did they work for the town after the adoption of that resolution as subordinate officers?

Mr. Dixon: I submit this should have been part of his main case. It is not what we reserved.

20

The Court: I suppose the object of this testimony is to show the practical construction placed upon the resolution by the officers at the time it was passed and thereby to throw light upon their understanding at the time it was passed. I think I will permit it.

A. Up to May the first.

30

Q. Had you yourself at any time during the year 1913 seen any of these old officers' badges that you speak of? A. Yes.

Q. And had you been chairman of the police committee in 1913 too? A. I do not believe so.

Q. You were not? (No answer).

40

Q. Do you know whether or not in 1913 the board had had any trouble with any holders of these special badges in regard to the exercise of police powers? A. Well, I know there is men

Samuel McIlrieth—Direct.

that held those badges overstepped their duty, that they acted as police officers when they were not, but I could not say that the board had any trouble with them.

Q. You knew that personally? A. I knew that personally.

10

Q. Tell us how you knew personally that men who held such special officers' badges had acted as police officers? A. For instance, I was bowling one night with a man who had a police officer's badge or special—one of those badges. The badges in Guttenberg are different shapes; some small and some large; and I was bowling with a man and he had his badge on and I said "What are you doing with that badge? You are not a police officer. Why don't you turn it in?" He laughed and I don't know what remark he made in answer.

20

Q. Was that prior to the adoption of this resolution? A. Yes.

Q. Can you tell of any other instance where you found such outstanding badges? A. Yes.

Q. Tell us of any others that you can now remember. A. One time I was walking on a street with a man and he had a police officers' badge and some one swept some dirt into the street on 26th street, and this fellow said he would lock him up. I said, "Why, you have got no authority as a police officer"; and he said, "Sure." And he showed me on his coat a badge, a police officers' badge—a special officers' badge.

30

Q. Was that in the year 1913? A. Yes.

40

Q. Before the adoption of this resolution?

Samuel McHrieth Cross.

A. Before the adoption of this resolution.

Q. Did you report these facts to the board, take them up with the board? A. I think we argued that question. Not personally, I didn't use names.

10

Q. But did you argue the facts which you have now retailed? A. Yes. Personally I was anxious to get these badges in, because I thought men were misusing them. In fact I heard they were.

20

Q. And did you argue those facts to the board at the time of the adoption of this resolution? Yes. We argued on that, but not in full, because the whole board during those meetings was in a state of chaos. We could not seem to get anywhere, and there did not seem to be any understanding; it was a case of forcing things through.

30

Q. You mean there were two factions in the board? A. There were two factions, and everything was slam-bang and like that, and finally things were brought to a vote, and we did not know really where we stood; we got no real support that we should have had.

Cross Examination by Mr. Dixon:

Q. Well, there was no faction on that vote, was there? A. On what vote?

Q. On the adoption of that resolution? A. Pretty near—nearly all the resolutions there were.

40

Q. Look at that and see who voted for it. A. It is a unanimous vote there.

Q. Everybody voted for it? A. Yes, sir.

Samuel McIlrieth—Cross.

Q. So there was no fight about that? A. There was with pretty near all the resolutions, with few exceptions.

Q. There was no faction about that? A. No.

Q. What were these badges that you say were out; what kind of badges were they, and what did they have on them? A. Well, they were supposed to be special officers' badges.

10

Q. I did not ask you what they were supposed to be; what were they? A. They were some form of police officer's badge.

Q. What did they have on them? A. I cannot say that. For instance this man Dunnegan had a badge pinned here on his vest and all I could see was the eagle on top of it.

20

Q. It may have been a society pin of the Eagles? A. No; I know the Guttenberg police badges.

Q. What did it say on it? A. I could not tell you; it was down in his vest pocket. I knew it was a police officer's badge, and he admitted it was such, and I knew he was a special officer.

Q. What was there on any police badge of the Town of Guttenberg that you ever did see; what were the words on it? A. "Guttenberg Police."

30

Q. "Guttenberg Police"; are you sure of that? A. Yes.

Q. Who held those badges that you know of—Guttenberg Police—at the time that resolution was passed?

40

Mr. Walscheid: You mean prior to the adoption of the resolution?

Samuel McIlrieth—Cross.

A. That I know of—Louis Jacobs was one; John Rearer was another one.

Q. Did he have a Guttenberg Police badge? A. Rearer?

10 Q. Jacobs? A. Suppose it was, because I could just see the top of the badge.

Q. I asked you who had those badges to your positive knowledge at the time of the passage of that resolution and prior to it. A. I told you positively that Louis Jacobs and John Rearer.

20 Q. They did not have them to your knowledge because you do not know what those badges were. A. I know positively they were police officers' badges.

Q. Did you see them? A. Yes.

Q. What did you see? A. If a man shows you a badge like this (illustrating) you can recognize it as a police officers' badge, but you wouldn't get right down to read it.

30 Q. You cannot say it was a Guttenberg police officer's badge? A. If he had any other officer's badge on he was still wrong, wasn't he?

Q. Can you tell me who had in their possession the Guttenberg police officers' badges—ordinance officers or whatever the badge was that was issued? A. They were supposed to be special officers.

40 Q. Did these men who were appointed police officers under the ordinance passed in the year before have these police badges? A. No; they had what they called Guttenberg police badges—the large badges.

Q. They had Guttenberg police badges then.

Samuel McIlrieth—Cross.

What did it say on these badges? A. "Guttenberg Police."

Q. "Guttenberg Police"? A. I suppose it was, yes.

Q. Well, don't you know? You were on the committee. A. Yes; but I have seen police badges hundreds of times; I have read them. 10

Q. I am asking you about the men who were appointed to the police department under the ordinance about a month before. A. They used the old police badges, with the exception of one; I guess his name was Renner.

Q. What did it say on those badges? A. "Guttenberg Police." 20

Q. Did anyone turn in their badges under that resolution? A. Not to me they didn't.

Q. Did they to anybody? A. I do not believe so. They were out for years. I didn't get them in.

Q. You did not have your policemen turn in their badges then? A. Policemen?

Q. Yes; any of these officers or anybody? A. Yes. When we could not get them in we passed this resolution and ordered them to bring them in, but they would not bring them in. 30

Q. Your own police did not bring them in? A. We did not want them to bring them in.

Q. Well, they did not bring them in, did they? A. No.

Q. Now did you know that a notice of which that (indicating a paper) is a copy was served on the members of the police force about the 1st of January? A. Yes; I think Mayor Herr- 40

Samuel McIlrieth—Cross.

mann served such a notice on me.

Q. And wasn't it on account of the service of that notice that this resolution was passed?

A. No.

10 Q. You say these men worked as ordinance officers up to May 1st? A. Yes.

Q. At that time were you chairman of the police committee? A. If we had a police committee—yes; I was appointed chairman of the police committee.

Q. Don't you know whether you were chairman of the police committee on May 1st or not?

A. Yes; yes.

20 Q. And you passed their bills, didn't you? A. Yes; we passed the bills.

Q. Well, you voted on them? A. Yes.

Q. Was there any difference in their salary between ordinance officers and police officers under the ordinance that was passed in December?

A. Yes; one was \$60 a month and I think the other was \$70; I am not positive; I think that was the figure for the patrolmen.

30 Q. You made a difference in the salary? A. Yes, sir.

Q. A slight difference? A. Yes.

Q. That was in order to avoid the effect of the—

Mr. Walscheid: I object.

Q. —writ of certiorari?

Mr. Walscheid: I object as immaterial and irrelevant.

40 The Court: I will permit that.

Q. Now Stephen Bostwick. Did he act as what we call ordinance officer up to—

Samuel McIlrieth—Cross.

Mr. Walscheid: I object.

Q. —May the 1st?

Mr. Walscheid: I object as not cross-examination and not within the limitations of the reservations at all. We have been all over this whole case.

10

The Court: He is trying to find out the accuracy of the recollection of this man with respect to those who did act as officers and what officers they acted as.

Mr. Walscheid: That may be so.

Q. Did he act as ordinance officer, not as a police officer, but ordinance officer under the charter up to May 1st, 1914? A. From the first of the year to May 1st, yes.

20

Q. And did Peter Handwerk, did he likewise? A. Yes.

Mr. Walscheid: Likewise up to May 1st, is that your question?

30

Q. Yes; likewise act as an ordinance officer and not as a patrolman up to May 1st? A. Yes.

Q. And William Tallman, did he also act as ordinance officer up to May 1st? A. Yes.

Q. And George J. Bell, did he likewise act as ordinance officer up to May 1st? A. Yes.

Q. John Handwerk, did he also act as ordinance officer to May 1st? A. Yes.

40

Q. John Buckley, he likewise? A. Yes.

Samuel McIlrieth—Cross.

Q. You are sure of that? A. Yes.

Q. You then have in mind a distinction between the services they rendered as ordinance officers and services they rendered as patrolmen or policemen? A. Yes, sir.

10

Q. That is true, is it? A. Yes.

Q. Why did you vote to pay those bills which were rendered for services as patrolmen prior to May the 1st for these different men?

Mr. Walscheid: I object on the ground it does not appear that they have been paid. Where does it appear that they have been paid?

20

Mr. Dixon: I asked him on cross examination if he voted for them.

The Court: If the objection is that the question contains an unwarranted assumption of fact, I will sustain it.

Mr. Dixon: He can say whether he did or not.

The Court: You did not ask him that.

30

Q. Did you or did you not vote to approve—
A. We can turn back and find the minutes. I do not remember that. This thing is so long ago that I cannot recall any of those things.

Q. You do recall; you have given us positive facts. A. On things I am sure of; not things I am not sure of, I can't give it. I am not sure. We can find that in the minutes, can't we?

40

Q. Did you vote to approve those bills? A. I cannot say whether I did or not. Most likely we did.

Samuel McIlreith—Cross.

Q. Look at the face of them and see. A. Yes; they are signed, but that would not say you voted in favor of them.

Q. Signed by whom? A. Signed by the majority of the members of the board—Schultz, Miller and McIlreith.

10

Q. And don't you know whether you voted to approve them? A. What is the date of that? Can't we find it in there?

Mr. Walscheid: Do you or do you not know?

A. I do not remember, Counsellor.

Q. Suppose I show you that you did? A. Then I would positively admit it. If we voted for them as patrolmen we made a mistake because Counsellor Walscheid warned us there was no such thing as patrolmen.

20

Mr. Dixon: I did not ask that and ask that it be stricken out.

The Court: It will be stricken out.

30

Q. Look at the minutes of a meeting held on May 4th.

Mr. Walscheid: I object on the ground it is not within the cross-examination, not within the reservation, something that happened on May 4, 1914. We have been all over this direct case. I haven't the other witnesses here.

40

Samuel Mellrieth—Cross.

The Court: I do not see how this bears on the reserved point.

10

Mr. Dixon: I do not know what the reserved point is, but this man is produced here to testify that these men worked as ordinance officers and not as patrolmen or policemen up to the first day of May, 1914.

The Court: Does this resolution show that they were paid in some other capacity?

Mr. Walscheid: No; they were not.

20

Mr. Dixon: They were ordered paid as something else.

The Court: If it shows they were ordered paid and this man voted for it, it would have strong bearing on the truth of his testimony that these men were not intended to be employed in the capacity you contend they were.

30

Q. At a meeting of May 4th, 1914, was there a resolution to pay these bills that are now before you? A. Yes; it reads that way.

Q. Was there? A. Ten days as patrolmen.

Q. Yes; and who voted for that resolution?

Mr. Walscheid: Why, sir, this is from April 30, after the Supreme Court had passed its judgment—

40

Mr. Dixon: I am going to put these in evidence and your Honor will have them before you.

Samuel McElrieth—Cross.

Mr. Walscheid: I do not think counsel is fair with the witness or with the court.

Mr. Dixon: You may argue the case.

Mr. Walscheid: I will, if your Honor will allow me: the case was this: that there was a writ of certiorari allowed in December—December 21, or something like that—

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The Witness: 20th.

Mr. Walscheid: Well, some day in December, 1913. The judgment of the Supreme Court came down on the 25th day of April, 1914. These bills run from the 30th day of April, 1914.

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Mr. Dixon: That is not true.

Mr. Walscheid: Look at them.

Mr. Dixon: "For ten days as police sergeant at \$900 per year, to April 30th, at \$2.47 per day." This is from April 20 to April 30, and the bill is sworn to on the 4th day of May. It is dated the 4th of May.

The Court: When did the adjudication on the certiorari come down?

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Mr. Walscheid: The opinion came down between the 10th and the 20th of April. The actual entry of judgment took place on the 25th of April. So that while these bills evidently ran back to the 20th—

The Court: At lease it includes five days of payment, so I will permit the question.

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Samuel McIlrieth—Cross.

Q. Who voted for that resolution? A. McIlreith, Miller and Schultz.

Q. Who voted against it? A. Schneider and Mayor Herrmann.

10 Q. Then you did vote for it? A. Yes; because Counsellor Walscheid told me on the 25th—

Q. I did not ask you for your reasons. A. Why, it says here positively we voted for it.

Q. Yes; I know. You didn't know it until you saw that; that refreshed your memory? (No answer).

Q. Then it is not true that these men worked as ordinance officers up to the first of May, is it?

20 A. Why, yes, it is.

Q. Oh! Is it? I call your attention to the minutes of the meeting of December 1st, 1913; were you present at that meeting? A. Yes; I was at all the meetings.

Q. You were present at that meeting? A. I am pretty sure.

Q. It is so indicated there in the minutes, isn't it? A. Yes.

30 Q. Now at that meeting this resolution was passed: "Resolved that all special officers' badges be and are hereby recalled, and all appointments of special police officers be and are hereby revoked from and after December 31, 1913." You voted for that resolution, didn't you? A. Does it say so in the minutes—1913—Counsellor, I—

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Mr. Walscheid: Look at it. Take the book and look at the beginning of the meeting.

Samuel McIlrieth—Cross.

Q. Yes; be sure about it.

A. Did I vote for—

Mr. Walscheid: There does not seem to be any vote on that particular resolution.

10

Q. "Upon motion the ordinance to establish the day and night police was adopted." You remember that, don't you?—"by the following vote: Miller, McIlreith, Schultz. On motion of Councilman Schultz, seconded by Councilman Miller, the following resolutions were introduced and unanimously passed." And the first one was that.

20

Mr. Walscheid: I guess that is right.

Q. That is one of those that was unanimously passed, isn't it? It is the third resolution unanimously passed at that meeting? A. It reads that way there.

Q. Well, you do not dispute that, do you? A. No, I do not.

30

Q. Now if on the first of December, 1913, you passed a resolution calling in all special officers' badges, what was the necessity of passing another resolution on January 5th calling in all badges, if the intention was as you have stated it to be, in order to get in the old badges? A. I don't know anything about this old resolution. I don't remember anything about it.

Q. You did not think about it until you came

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Samuel McElrath—Redirect.

in here and looked at it? A. No; I don't know that there is such a resolution here now.

Q. You voted for it? A. Yes; it says so unanimously here.

Q. When did you get the idea or the notion that the reason of your voting for the resolution of January 5th was as you have stated it here; when did you get that notion? A. Oh, that was in my head for a long time.

Q. For a long while? A. Yes.

Q. That was in your head for a long while simply because you had forgotten about this one of December? A. No; I didn't know anything about this. I do not recall that.

Q. You did know about it? A. At that time, certainly. It says so.

Redirect Examination by Mr. Walscheid:

Q. This resolution of December 1st, 1913, which reads: "Resolved, that all special officers' badges be and are hereby recalled and all appointments of special officers be and are hereby revoked from and after December 31, 1913," that referred to these same badges that the resolution of January 5 referred to, didn't it?

Mr. Dixon: He does not know. I submit that he said he don't remember anything about this.

Q. Now that you can see it, does it or doesn't it?

Samuel McIlrieth—Redirect.

The Court: I will permit it.

A. It reads that way, and I believe it was that way, but I do not recall that resolution.

Q. You do not recall that resolution? A. No.

Q. Did any of these old special officers' badges which are referred to in the resolution of December 1st, 1913—did any of these badges come in to the Board of Council about the first of January or about the 5th of January, 1914? A. I don't know. I have not known of them; I saw none of them. 10

Q. You were chairman of the police committee? A. None of them came in to me.

Q. None of them came in to you? A. No. 20

Q. None of them came in to the board, so far as you know? A. No. Some of them are holding them out there for ten or twelve years, I believe.

Q. Now on May 4th when you voted to pass these claims, seven in number, voting to these seven man police salary for ten days, had you received any communication in reference to the determination of the writ of certiorari? A. Yes. 30

Q. From whom? A. From you.

Q. And when had you received that? A. That was about April 25th.

Q. And had you then been informed—had you received any advice in relation to the status of these patrolmen after the handing down of the decision in the case? A. Yes; you told me to start the men off as patrolmen on their regular duty on May the 1st. 40

Samuel McIlreith—Redirect.

Mr. Dixon: They started before you told them. They beat you by ten days.

Mr. Walscheid: Well, they beat me to it.

10 Q. Had you been told anything in reference to the right of these men to draw pay as patrolmen by me? A. Yes.

Q. What had you been told as you remember it? A. If this is the answer to your question—you told me to start those men as patrolmen and they were to draw patrolmen's salary beginning with May the first.

Recross Examination by Mr. Dixon:

20 Q. So you went and voted to give them patrolmen's salary from April 20th, did you, because your counsel had advised you differently? A. As patrolmen?

Q. Yes; and approved the bills for salary? (No answer).

Q. That is all.

Redirect Examination by Mr. Walscheid:

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Q. I call your attention to a resolution found upon page 142 of the minutes, being the minutes of April 6, 1915, which reads as follows: "A report from the subordinate officers of lights out during the month of March, 1914, was received and upon motion of Councilman McIlreith, seconded by Councilman Schultz, was accepted by the following vote: Ayes, Councilmen McIlreith, Muller and Schultz; noes, Councilman Schneider and Mayor Herrmann." That reso-

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Samuel McIlreith—Redirect.

lution was adopted at that meeting? A. Yes.

Q. Who are the subordinate officers therein referred to? A. Handwerk, Buckley, Tallman, Bostwick, Peter Handwerk, George Bell and Newman.

Q. The men who were appointed on the first of the year? A. Yes. 10

Q. And did these men between the first of the year and the first of May make reports to the Board of Council? A. Yes.

Q. Or to you from time to time as subordinate officers? A. Yes; made reports right to the Council Board.

Q. As subordinate officers? A. Yes; subordinate officers. 20

Q. I call your attention to another resolution in the minutes of April 6, 1914, found upon page 146 of the minutes, which reads as follows: "Upon motion of Councilman McIlreith, seconded by Councilman Schultz, the following claims were ordered paid by the following vote: Ayes, Councilmen McIlreith, Miller and Schultz; noes, Councilman Schneider and Mayor Herrmann. Absent, none. John Buckley, salary as subordinate officer, from March 15 to 31, \$32.50; William Tallman, salary as subordinate officer from March 15 to 31, \$32.50. Stephen Bostwick, the same. George Bell, the same. Peter Handwerk, the same. John Handwerk, the same, except that his amount is \$33.33." Was that resolution adopted at that board meeting? A. Yes. 30

Q. And you voted for it? A. Yes, sir. 40

Q. And that referred to the appointments

Samuel McIlreith—Redirect.

made on January 1st, 1914? A. Yes; it says so, Counsellor—subordinate officers.

10 Q. I now call your attention to regular meeting of the board held at the town hall Monday evening, April 20, 1914, and to a resolution adopted at that meeting as appears on page 152 of the minutes: "Resolved that the town attorney be notified to prepare bills for the amount of salary that may be legally due the police officers under the decision of Justice Swayze, and that the board adjourn to meet again Wednesday night, 8 p. m., April 29, 1914, for the purpose of disposing of the bills so rendered." That was
20 presented by you, wasn't it? A. Yes.

Q. And was adopted by the vote of McIlreith, Miller and Schultz in favor, and Councilman Schneider and Mayor Herrmann against? A. Yes.

Q. So that about the 20th of April, 1914, you and the board had knowledge of the decision of Justice Swayze in the certiorari proceedings?

A. Yes; according to that we had.

30 Q. According to that resolution? A. Yes.

Mr. Dixon: I offer in evidence those bills.

(Bills marked in evidence "D-1-2|25-16).

Daniel Herrmann—Direct.

DANIEL HERRMANN, recalled.

By Mr. Dixon:

Q. This notice, or form of notice, did you serve that on the town officers? A. Yes, sir. 10

Q. Do you remember when it was served?

A. On the 5th of January, 1914.

Q. The same day this resolution was passed?

A. Yes; a little while before that; probably an hour before the meeting.

Q. You voted for that resolution of January 5? A. Yes.

Q. Do you recall its introduction? A. Yes. 20

Q. Was there any discussion about it before the vote was taken? A. No, sir.

Q. None at all? A. None whatever.

Q. How was it introduced? A. The resolution was introduced in typewritten form.

Q. The way it is pasted in that book; that is the original resolution pasted in? A. Yes.

Q. Who read it, do you know? A. The clerk.

Q. Then what happened? A. Why, it was adopted by unanimous vote. 30

Q. Well, who put the question, do you know?

A. You mean the Councilman that moved to have it adopted?

Q. There was a motion made? A. There was a motion made.

Q. Did you put— A. I did not put it, no.

Q. Somebody—the chairman put the question?

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Mr. Walscheid: He was chairman.

Daniel Herrmann—Direct.

A. Oh, yes; I was chairman; I put the question. I did not understand your question.

Q. You put the question? A. Yes, sir.

10 Q. Tell us what took place with regard to the passage of that resolution. A. The clerk read the resolution and I put the question, and one of the councilmen, I could not recollect now, moved to have it adopted, and it was seconded and passed by a unanimous vote.

Q. Were you present at the meeting of December 1st, prior to that meeting? A. No, sir.

20 Q. Do you know how the police or ordinance or subordinate officers were appointed in Guttenberg and have been appointed? A. Yes.

Q. How? A. By resolution.

Mr. Walscheid: I object as immaterial—I withdraw the objection.

Q. Do you know whether they have or have had any badges of any description? A. These subordinate officers?

30 Q. Yes; any of them? A. Yes.

Q. Have you seen those badges? A. Yes, sir.

Q. Who were they? A. They were John Handwerk—

Mr. Walscheid: They were the men mentioned in the resolution.

40 A. Six men; John Buckley, Stephen Bostwick, Peter Handwerk, William Tallmann, George Bell.

Q. Were there any other special officers in the town of Guttenberg excepting those you have mentioned who had badges? A. This attend-

Daniel Herrman—Cross.

ance officer, John Newman, he had a badge.

Q. Were there any other special officers? A. Not that I know of.

Q. Were there any other special officers that you know of in the town, whether they had badges or didn't? A. Not that I know of.

10

Cross Examination by Mr. Walscheid:

Q. You say that the ordinance officers had badges marked "Ordinance Officers"? A. Yes.

Q. And there were also police badges out, weren't there? A. Yes.

Q. On January 1st, 1914? A. No, he did not mention about the dates.

20

Q. I am asking you. A. I do not believe ordinance officers were out then. We furnished the ordinance officers' badges since the 18th of —well, since the beginning of 1915.

Q. Of course, those ordinance officers' badges did not go to the men mentioned in this resolution of January 1st, 1914? A. No, no.

Q. You do not know whether these men had ordinance officers' badges, do you? A. No; I do not.

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Q. You do not know what badges they had? A. Which men do you refer to?

Q. The men mentioned in the resolution of January 1st, 1914? A. I know they had police officers' badges.

Q. Police officers' badges? A. Yes.

Q. Regular police officers? A. Yes—"Guttenberg Police."

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Daniel Herrman—Cross.

Q. And you know they had got those badges when they became members of the department as it was created? A. I do not know that.

10 Q. Don't you know the bill was presented to the board and you voted against it? A. No; it was not.

Q. Don't you know that prior to January 1st, 1914, there were many badges out in the town of Guttenberg purporting to be police badges? A. There probably was; but I could not—

Q. Well, don't you know that? A. Yes, yes.

Q. And you yourself had seen them? A. Yes.

20 Q. And you now can mention some people who still have such badges, can't you? A. No; I cannot.

Q. On whom did you see them prior to January 1st, 1914? A. I never took notice—yes; I could mention one man if you want me to.

Q. Who? A. The janitor there, Charles Rademacher, that was reappointed without pay.

30 Q. Without pay. He had one of those special officers' badges for years, hadn't he? A. Yes; he had one of those until he—

Q. And you know that others had those special officers' badges for years? A. I could not say I knew it.

Q. Well, it was common knowledge in the town? A. Yes.

Mr. Dixon: Town talk.

40 Q. And you know that prior to January 1st, or prior to December 1st, 1913, it had been

Daniel Herrman—Cross.

the practice in the town of Guttenberg to appoint men to do police duty on special occasions? A. Yes, under resolution—for one year only.

Q. And then these men would receive police badges, would they not? A. Yes. 10

Q. And that practice has extended over a period of at least six or seven years, hadn't it? A. Yes; probably more.

Q. And these men as they received their badges would not turn them in at the end of the year, would they? A. I was only on the board then five days; I do not know when they were turned in. 20

Q. You know they were turned in during your time, were they? A. Yes; they were.

Q. Who turned them in? A. These officers here, Bostwick and Bell.

Q. Turned in what? A. Their badges.

Q. And they turned in their badges after the Court of Errors decided that the ordinance under which the department was created had been repealed; that is what you mean? A. Yes. 30

Q. They turned them in this last year, 1915? A. Yes, 1915, yes.

Q. I am going back to January 1st, 1914. No badges were turned in at that time? A. No—I could not say.

Q. You knew of none, did you? A. January 1st, 1914—no, I did not know of any.

Q. And no badges were ever reported as having been returned during the year 1914, were they? A. No. 40

Q. How many persons do you think were ap-

Daniel Herrmann—Direct.

pointed with special police power in the town of Guttenberg— A. I could not tell you.

Q. Wait a minute. A. Oh!

Q. During the six years immediately preceding January 1st, 1914? A. I couldn't tell you that.

Q. Not more than a hundred, were there? A. I could not answer your question at all.

Q. Haven't you any idea? A. No.

Q. Well, didn't you meet as many as 50 or 75 special officers at the polls in November, 1913? A. That is what they used to say, but I do not know if they were appointed—

Q. Didn't you see them there? A. I did not see them with badges; I saw men around the polls, but I did not know what they were to do.

Q. You would see them in civilian clothes? A. See men in civilian clothes, yes, sir.

Q. Carrying a club? A. No.

Q. Well, with a badge on their breast? A. You could not see that.

Q. Well, you know they had them? A. No; I did not.

Q. Will you swear they did not have them? A. No; I won't.

Q. They were apparently exercising police authority, weren't they? A. They may have been.

Q. And you know that just before that election a large number of them had been appointed, don't you? A. What is that?

Q. You know that just before that election a large number of them had been appointed, don't

Daniel Herrman—Cross

you—in the year 1913? A. No; I do not know it.

Q. Now, Mr. Herrmann, I want to refresh your memory. Do you remember showing me one of the official Guttenberg town reports for the year 1913, with a large list of names in it— A. Yes.

10

Q. —each marked “Special Officer”? A. Yes.

Q. With two dollars behind his name for services on election day? A. Yes; you told me there was no proof of the fact—

Q. Not what I told you. A. You said that was in pamphlet form and you said I did not know that.

20

Q. You knew that those men had been doing police duty? A. I did not.

Q. You ran at that election? A. At what election?

Q. In 1913? A. Yes.

Q. Didn't you see them around at the polls? A. I saw the men around, yes.

Q. Didn't you know that they were doing police duty? A. I did not. I know they were around ther, and I see they got the money for it in this pamphlet; I do not know what duty they were doing.

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Q. And you knew they got the money from the town, didn't you? A. I do not know what duty they were doing.

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Redirect Examination by Mr. Dixon:

Q. Do you know whether the two badges were issued under this resolution of January 1? A. No; they used their badges that they had; they had not turned in any.

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TESTIMONY CLOSED.

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New Jersey Court of Errors and Appeals

JOHN HANDWERK, *et als.*,

Plaintiffs,
Defendants on Appeal,

vs.

THE TOWN OF GUTTENBERG, in
the County of Hudson,

Defendant,
Plaintiff on Appeal.

At Law.

Two Cases.

Brief for Plaintiffs-Defendants on Appeal.

Statement of Facts.

Two cases were tried together without a jury and from the findings of the Trial Judge (pp. 35-41) the following facts appear:

Prior to December, 1913, the Town of Guttenberg had no day and night police. Prior to that date police duty was done by officers appointed *from year to year* under Section 15 of the Guttenberg charter, hereinafter referred to, who wore uniforms and had badges.

On December 1st, 1913, the town, pursuant to the powers conferred by an act hereafter quoted, adopted an ordinance entitled, "An ordinance to establish, regulate and control a day and night police, and to regulate and define the manner of their appointment and removal, their duties and compensation." This ordinance created a regular department, defined the manner of appointment and removal of the members thereof, their duties and compensation. It was amended by "An ordinance to amend 'An ordinance to establish, regulate and control a day and night police,

to regulate and define the manner of their appointment and removal, their duties and compensation,' passed and approved December 1st, 1913." This amendatory ordinance amended the compensation to be paid to officers and the age limit as fixed by the original ordinance to make these provisions comply with statutory requirements.

The ordinance as amended provided for a captain of police at an annual salary of one thousand dollars; a sergeant of police at an annual salary of nine hundred dollars; and five patrolmen each at an annual salary of eight hundred and forty dollars.

At a meeting of the Board of Council held on the 19th day of December, 1913, John Handwerk was appointed captain; John Buckley was appointed sergeant, and Peter Handwerk, Christopher Barth, William Tallman, Stephen Bostwick and George Bell were each appointed patrolmen of said day and night police.

These men immediately qualified by subscribing to an oath of office which was forthwith filed with the clerk of the town on the 19th day of December, 1913. On December 20th, 1913, a writ of certiorari was allowed removing to the Supreme Court for review the ordinance thus amended. Prior to the adoption of this ordinance many persons had in the course of the years been appointed officers under Section 15 of the town charter.

All of the badges were called in upon the adoption of the police ordinance. Besides, the terms of office of all of these appointees would and did expire on the first day of January, 1914, when the Board of Council elected in the fall of 1913 came into power. The allowance of the writ of certiorari therefore left the town without any

police protection at the beginning of the year 1915. In order to meet this condition, council, on January 1st, 1914, went back to the practice in vogue before the adoption of the police ordinance and adopted a resolution appointing six *subordinate officers and agents* under Section 15 of the town charter to give to the town such police protection as that section and the wearing of uniforms might provide. The six men thus appointed were *six* of the *seven* men who were appointed under the ordinance creating a day and night police. Christopher Barth, who was appointed under the ordinance, was not thus appointed. The term of office of these subordinate officers and agents by the resolution of appointment was fixed at one year. The salary of each is less than that provided in the ordinance creating a day and night police for the positions to which they were thereunder respectively appointed. The men appointed as subordinate officers and agents immediately took oaths of office which were filed with the town clerk, and thereafter patrolled the streets of the town as subordinate officers and agents until May 1st, 1914, *after* the decision by the Supreme Court in certiorari had been handed down.

No police service of any kind was rendered between January 1st and May 1st, 1914, in the town, except as rendered by the said six individuals as ordinance officers.

From May 1st, 1914, forward to the 18th day of January, 1915, the *seven* men appointed, respectively captain, sergeant and patrolmen under the day and night police, performed their duties under the ordinance as amended, creating the day and night police of the Town of Guttenberg and no other police services were rendered in the town. On January 18th, 1915, this ordinance

was repealed and the positions of captain, sergeant and patrolmen of the day and night police were thereby abolished. (See *Buckley v. Guttenberg*, 87 N. J. L. 434.)

For the services rendered by these six individuals as subordinate officers and agents, and by the seven individuals as members of the day and night police of the Town of Guttenberg, *no payment whatever has been made by the town.* The six subordinate officers and agents from time to time presented their claims for payment in accordance with the compensation provided in the resolution of their appointment, *and these claims were always passed and approved of by the Board of Council as presented;* they covered the period between January 1st and May 1st, 1914.

The seven individuals appointed as members of the day and night police from time to time submitted to the Town Council sworn claims for services rendered by them between May 1st, 1914, and January 18th, 1915, and all claims thus presented up to January 1st, 1915, *were also passed and approved of by Town Council.* Claims presented for the two weeks in January, 1915, were not approved of by Town Council.

The claims approved of by Town Council were not paid because the mayor of the town appointed under an act entitled "An act to provide for the election in incorporated towns of this state of a councilman at large to be called mayor, and to regulate his duties and terms of office" (P. L. 1907, page 121; 4 C. S. 5426, Section 36), *had power to sign the pay warrants and refused to do so.*

The *six* individuals appointed as subordinate officers and agents have instituted suit to recover the salary due them as subordinate officers

and agents from January 1st to May 1st, 1914, and the *seven* individuals appointed members of the day and night police have instituted suit to recover their salaries for services rendered under their appointments as members of the day and night police from the first day of May, 1914, to the 18th day of January, 1915.

The writ of certiorari was argued April 4th, 1914, before Mr. Justice Swayze, who advised judgment for the defendant. Upon this decision a rule for judgment dismissing the certiorari was entered April 24th, 1914. From this judgment prosecutors appealed May 6th, 1914, and the Court of Errors, on November 16th, 1914, affirmed the judgment below for the reasons given by Mr. Justice Swayze in the Supreme Court (86 N. J. L. 681).

Argument.

The Town of Guttenberg in the County of Hudson is organized under the provisions of an act entitled, "An act to incorporate the Town of Guttenberg in the County of Hudson" approved March 9th, 1859 (Chapter 78, Laws of 1859, p. 199), and the amendments and supplements thereto.

Section 15 of this act provides: "That the said corporation (the town) shall have power to appoint *such number* of subordinate officers and agents *as they may deem proper* to enforce all such ordinances as they may be authorized by this act to pass, *which officers shall have power to arrest all persons violating any of the ordinances of this corporation, and to bring them before some one of the councilmen who may proceed in a summary manner to hear and determine said charge.*"

Section 7 of this act provides:—that for the payment of *the expenses incident to said corporation*, other than those relating to streets, it shall be lawful for said councilmen by ordinance to order a sufficient sum not to exceed two hundred dollars in any one year. This amount was increased by an act passed in 1868 (P. L. 1868, p. 186) to the sum of six hundred dollars, while the limit thus provided was taken off by the act entitled, “An act concerning incorporated towns in this state and certain officers thereof” (P. L. 1884, page 326; 4 C. S. 5415), which provides in Section 6 (C. S. 5418) that the qualified voters of the town may at their annual town meeting, charter or municipal election, raise in each year by vote, for the following, among other purposes, such sum or sums of money as they shall deem expedient:

1. For the support of the police department.
2. For *the salaries of officers not included under any other head*.
3. For the contingent expenses of the town.

When this act of 1884 was adopted, the annual town meeting, charter or municipal election was held in April of each year and all tax levies were voted at these elections.

In the year 1905 there was adopted an act entitled, “An act relative to the term of, election and appointment and terms of office of officers elected or appointed in towns, townships, boroughs and other municipalities of this state” (Laws of 1905, p. 14). It abolished the annual town meeting, charter or municipal election (better known as spring election) and provided that these elections should thereafter be held *in November* of each year and upon the same official ballots required for the election of state and county officers and not otherwise.

Immediately following this act, there was adopted another act entitled, "An act concerning the levy of taxes in certain municipalities" (Laws of 1905, p. 16). Section one of this act provides that "In every municipality of this state where tax levies are raised or fixed by vote of the people at the local or charter elections, the said tax levies for each annual tax levy for the *succeeding* taxing year shall be hereafter voted for by the people on the first Tuesday after the first Monday of November in each year and with the same registration and upon the same official ballots required by law for the election of state and county officers *and not otherwise.*"

Since the moneys voted in November, 1905, could be raised only in the tax levy of 1906, the change of time for voting appropriations from spring elections to fall elections created a break in the year 1905 for which no appropriation was voted. To meet this situation, the second section of this act provides that "it shall be lawful for *the Town Council, etc.,* to provide at any time *before July 1st next* (1905) for the moneys required to be raised for all lawful purposes and *placed in the tax levy for the year 1905.*"

At that time school appropriations were voted by the people in township, incorporated town and borough school districts on the Third Tuesday in March, or at special election called by the Board of Education (L. 1903—2nd Special Session, secs. 79 and 95), *and municipal officers had nothing to do with these appropriations.* The abolition of spring elections did not abolish these boards of education and the tax act just referred to (Laws of 1905, p. 16) was therefore too broad and had to be amended. It was amended by Chapter 36 of the Laws of 1905, page 60, to

make section one read: "In every municipality of this state where taxes are raised or fixed by vote of the people at the local or charter elections, *except school districts*, the said tax levies," etc., etc.

The next pertinent legislative enactment is Chapter 169 of the Laws of 1912, page 257.

This act *takes from the voters the right to make appropriations and places it in the Board of Council*. It provides that: "The governing body of any town * * * is hereby authorized * * * to pass an ordinance or ordinances for the appropriation of, and to appropriate annually, such sum or sums of money as shall be necessary for all the general and incidental expenses of said town, *including* the support and maintenance of the free public schools of said town for the *then current year*, and the money or moneys so appropriated or such part thereof as in the judgment of said governing board shall be necessary, shall be raised by taxation."

The school year runs from July 1st to July 1st (L. 1903, Second Special Sess. 238); the town fiscal year from January 1st to January 1st (3 C. S. 3669, Sect. 740). Hence the school appropriation is levied for the *current year* while the town appropriation is levied for the *next* fiscal year.

The act of 1884 entitled "An act concerning incorporated towns of this state and certain officers thereof," hereinbefore referred to, gives council power to pass, alter, amend and repeal ordinances "To establish, regulate, and control a day and night police and to regulate and define the manner of their appointment and removal, their duties and compensation."

Persons appointed so-called ordinance officers under the charter provisions as well as persons

appointed under the Statute of 1884 and the ordinances adopted thereunder are police officers. The only difference between officers appointed under the charter and those appointed under the later statute and the ordinances *is one of extent of power.*

1 Dillon, 5th Ed. Sec. 390, p. 670.

The power of the ordinance officers is limited by the charter enactment to the enforcement of town ordinances.

The power of policemen appointed under the later statute and the ordinances pursuant thereto is greater and amounts to that of a general peace officer of the state.

At common law, a peace officer has the right to arrest *without warrant* one whom he *suspects* to be guilty of felony, although it afterwards appears that no felony was committed provided he has *reasonable cause* to suspect that the person arrested has committed a felony. *There is* this distinction between a private individual and a constable: In order to justify the former in causing the imprisonment of a person, he must not only make out a reasonable ground of suspicion but he must also *prove* that a felony was actually committed; whereas a constable having reasonable ground to suspect that a felony has been committed, is authorized to detain the party suspected until inquiry can be made by the proper authorities. The distinction between felonies and misdemeanors is not observed in our criminal code.

Brown v. State, 62 N. J. L. 666, at p. 695.

In the State of New Jersey the foregoing principles of law apply to crimes generally.

The council of the town in the year 1913, being advised that the officers theretofore appointed by them had not as full police power as they should have, decided to adopt the ordinance which created the day and night police.

The allowance of the writ of certiorari after the creation of the day and night police and the appointment of the officers thereunder, acted as a *supersedeas* and left the town without police protection during the pendency of the writ and before the dismissal of the proceedings brought up for review.

This *supersedeas*, however, only went to proceedings had or taken *under* and *pursuant* to the ordinances brought up for review.

Hunt v. Lambertville, 46 N. J. L. 59.

Helper v. Simon, 53 N. J. L. 550, at p. 553.

It could not affect steps taken by the Town of Guttenberg to give to the town police protection under the authority of enactments not at all related to the legislative enactment or the ordinances brought up for review.

Helper v. Simon, 53 N. J. L. 550, at p. 553.

The council of the town had the right, and was in duty bound to give to the town and its inhabitants such police protection as existing legislation permitted, provided that in doing so, they did not impinge upon the sphere of the *supersedeas*.

The council was not prevented by the *supersedeas* of the writ of certiorari from appointing subordinate officers under the charter provision.

And since, subordinate officers, as such, had the right to enforce town ordinances and had the right to wear the uniform of policemen, and as *private individuals* had the right to cause the imprisonment of persons against whom

they might be able *to prove* that a crime was committed, and could therefore exercise all the powers of regular policemen, excepting the power of arrest upon suspicion of crime. It was important to the town to give to it at least such police protection as subordinate officers in uniform exercising their right of arrest as citizens could afford the municipality.

The result was the appointment of the ordinance officers for a period of one year.

When, thereafter on the 25th day of April the judgment dismissing the writ of certiorari was entered, the supersedeas was vacated and disappeared; and the fact that an appeal was taken on the 6th day of May, did not revive the supersedeas and did not stay the Town of Guttenberg from allowing the officers appointed under the ordinances creating a day and night police to perform their duty.

Lantz v. Hightstown, 46 N. J. L. 102.

It was because of the fact that the supersedeas *had* been lifted by the decision of the Supreme Court that the council of the town ordered the subordinate officers to discontinue and the day and night police to assume their duties as of the first day of May, 1914.

And, in order *to prevent the subordinate officers from asserting any claims for salaries for the balance of the year after May 1st*, and as a *matter of precaution*, their resignations were taken as of May 1st, 1914.

It is the contention of the plaintiffs that under these circumstances the subordinate officers are entitled to recover for services rendered by them as subordinate officers from the first day of January, 1914, to the first day of May of that year, and that the members of the day and

night police are entitled to recover for services rendered by them from the first day of May, 1914, to the 15th day of January, 1915, when said department was abolished.

Against the right of the subordinate officers to recover, the defendant says that:

1. The resolution of appointment of January 1, 1914, pursuant to the powers conferred by Section 13 of the Charter, was repealed.

2. No provision was made for the payment of the compensation of these subordinate officers or agents by the council.

And as against the right of the members of the day and night police to recover for the service rendered by them between May 1st, 1914, and January 18th, 1915, the defendant says that:

1. Such police duties as were performed between May 1st, 1914, and November 16th, 1914, were performed either:

- (a) In violation of the inhibition carried by the writ of certiorari, while the same was pending in the Court of Errors and Appeals before decision (*Herman v. Guttenberg*, 86 L. 681), or

- (b) Under authority of the resolution of January 1, 1914 (if such resolution were not repealed by the resolution of January 5, 1914), or

- (c) Without legal authority whatsoever.

2. There was no appropriation made for the payment of the salaries of the police officers appointed under the ordinance, for services performed during the year 1914 or the year 1915.

The plaintiffs will answer these objections in the order in which they are presented in defendant's brief.

Point I.

The resolution of January 1, 1914, was not repealed.

The resolution of January 1, 1914, is as follows (p. 25):

“Resolved, that the following subordinate officers or agents be and are hereby appointed *for the ensuing year*, at the salary set opposite their names to be paid in equal semi-monthly installments at the middle and end of each month:

John Handwerk, \$800 per year.

Stephen Bostwick, \$780 per year.

John Buckley, \$780 per year.

William Tallman, \$780 per year.

George Bell, \$780 per year.”

It will be noted that Christopher Barth, who was appointed one of the day and night police under the ordinance then in the Supreme Court for revnew, was *not* appointed to *regular* employment under the resolution.

The claim that the foregoing resolution was repealed rests upon the adoption by council on January 5th, 1914, *four days after the adoption of the first resolution*, by the following resolution:

“Resolved, that Charles Rademacher and Christopher Barth be and are hereby appointed *special* subordinate officers or agents *without pay*, their duties to consist of enforcement of ordinances and such other duties as the town charter provides; and be it further resolved that *all special* officers' badges *with the exception of the two just issued* be and are hereby recalled.”

The foregoing resolution does not contain an express repealer of the resolution of January 1st, 1914, and such repealer must therefore necessarily be implied from the language of the resolution passed January 5th, 1914.

The question of the repeal of the resolution of January 1st, 1914, is one of legislative intent. Defendant concedes this to be so, and itself seeks such legislative intent in the proceedings prior to January 1st, 1914, for the purpose of arguing to the Court of Errors and Appeals that council in fact intended a repeal. A reversal of the judgment below upon this point would however necessarily rest solely upon a *finding of fact* that council on January 5th, 1914, *intended* and by adoption of the resolution of that date did repeal the resolution of January 1st, 1914.

The Court of Errors and Appeals will not make such finding if there was *any* evidence to justify a contrary finding in the court below.

Ryer v. Twokel, 75 N. J. L. 677, p. 683.

The case was tried without jury. The *uncontradicted evidence* of Samuel McIllyvieth, member of council at the time, and chairman of the police committee of council at the time, is, that the portion of the resolution of January 5th, 1914, which provides that "all special officers' badges, with the exception of the two just issued, be and are hereby recalled" *was not intended* to repeal the resolution of January 1st, 1914, but was intended to bring back to the board of council of the Town of Guttenberg, the emblems of authority which that board, prior to January 1st, 1914, had from time to time issued to citizens of the town for the purpose of enabling them *without regular compensation* to assist in the enforcement of law and order under the provision of chapter 15 of the Town Charter.

There being evidence in the cause to support a finding that the resolution of January 5th, 1914, was not intended to repeal the resolution of January 1st, 1914, but was directed merely at the physical return of badges which constituted *indicia* of power and the Trial Court having found for the plaintiff below, it must be assumed that the Trial Court found as a fact that the resolution of January 5th, 1914, did not repeal the resolution of January 1st, 1914.

Nor can the fact that Christopher Barth, who is not a plaintiff in the first of the two suits,—who is not a plaintiff seeking to recover any moneys under the resolution of January 1st, 1914, and who, since he was not appointed under that resolution could not recover thereunder, mistakenly joined in a resignation on December 1st, 1914, as an ordinance officer appointed by resolution adopted on the first day of January, 1914, throw any light upon the intent with which the resolution of *January 5th, 1914*, was adopted by council.

But even without the explicit testimony of Mr. McIlvieth, the act of council in receiving and passing for payment from time to time the claims of the six subordinate officers appointed under the resolution of January 1st, 1914, plainly indicates the view which council at the time took of the effect of the resolution of January 5th, 1914. Surely council would not accept from the six subordinate officers claims for services *as subordinate officers at the rate of salary fixed by the resolution of January 1st, 1914, and pass these claims to payment* if they had intended by the resolution of January 5th, 1918, to effect a repeal of the resolution of January 1, 1914.

So also an examination of the resolution of January 5th, 1914, discloses that it calls the

two appointees *special subordinate officers or agents without pay*, while the resolution of January 1st, 1914, appoints subordinate officers or agents at salary. And in that part of the resolution which recalls badges the resolution of January 5th, 1914, resolves that all *special officers' badges with the exception* of the two *just issued* be and they are hereby recalled. The council had then just issued two badges to *special subordinate officers or agents without pay*, and was using the word *special* as a designation for all subordinate officers or agents *as did not receive pay*. Thus construed, the resolution of January 5th, 1914, deals with a class of officers different from that covered by the resolution of January 1st, 1914. Thus construed, the later resolution merely recalls the badges of all subordinate officers or agents of the town, *who are serving without pay*, excepting the badges of the two then just appointed.

We submit that the resolution of January 5th, 1914, does not repeal the resolution of January 1st, 1914.

Point II.

Provision was made for the payment of the compensation of these subordinate officers or agents by the council.

Under a caption setting forth the negative of the foregoing title, defendant contends and argues that "No ordinance for this purpose was ever adopted and the amount fixed in the resolution far exceeded the statutory limitation."

An examination of defendant's request to find (pp. 16-18) will disclose that no proposed finding covering the claim now advanced was

submitted to the Trial Court. The point argued is therefore not available to defendant.

Mills v. Mott, 59 N. J. L. 15.

Webster v. Freeholders, 86 N. J. L. 256,
and cases there cited.

An examination of defendant's answer in the suit will disclose that it pleaded *as an affirmative* defense to the action that:

"At and during the time of the alleged performance of said services by the plaintiffs *and prior thereto* no moneys were appropriated by said town for such purpose, nor have any such moneys been appropriated for such purposes since the time of the alleged performance of the said services" (p. 29, ff. 30-40).

And that plaintiffs joined issue upon this defense (p. 32, f. 1).

Defendant adduced *no* evidence in support of that defense and was therefore not entitled to relief under the same, *since no evidence whatsoever was produced showing that no ordinance was adopted or that no appropriation or provision was made for the payment of the compensation of these subordinate officers or agents by the council*. On the contrary, plaintiffs *out of their turn* and by way of rebuttal of evidence *expected* to be given under the claim of defendant (p. 94) produced an accountant who swore that the police fund from which these subordinate officers were to be paid during the year 1914 showed a credit balance of \$7,796.47 at the beginning of the fiscal year 1914 (p. 94) credited in a separate fund (p. 96, f. 30) and that the ledger of the Town of Guttenberg showed that there was a credit to the police fund of that amount unexpended (p. 98, f. 20) and that the money was on hand *for use at that date* (p. 101, ff. 10-30).

The sum of \$7,796.47 thus *in hand* on January 1st, 1914, for police purposes, was ample to pay the subordinate officers for the year 1914 the *total* of their salaries, \$5,480.00, *or* if the regular police force should go to work was ample to pay to them the *total* of the salaries due to them for the fiscal year 1914, amounting to \$6,100.00. There was therefore sufficient evidence before the Trial Court to *support a finding*—if one had been requested,—that *ample* provision had been made *for the payment of the compensation of these subordinate officers or agents*.

But defendant does not object that the money to pay these officers was in the fund. It objects that no ordinance for appropriations was passed *in the year 1914* and claims that it was unlawful to appropriate *in 1913* moneys to be expended *in 1914*. The identical objection was raised by the same counsel for defendant in the case of *Herman v. Guttenberg*, 86 L. 681. That was the writ of certiorari reviewing the appointments of the regular police officers appointed in December, 1913, as hereinbefore set out. The prosecutor of that writ denied to the town the right by tax ordinance to provide in the year 1912 for police expenditures in the year 1913, and upon that ground challenged the right of council to adopt the ordinance creating the department. The ordinance creating the police department had been passed in December, 1913,—in the fiscal year 1913. The case was argued in 1914, and defendant claimed that there was no appropriation ordinance in 1914 for 1914 and that therefore the proceedings were void. The Court of Errors adopted the opinion filed by Mr. Justice Swayze in the Supreme Court in which he held that council had the right to make the appointments since "*they had enough money in hand*

to pay them for the year 1913." That fact alone he thought prevented the Court from setting either the ordinance or the resolution of appointment.

The Trial Court in this case adopted this reasoning of Mr. Justice Swayze and based upon the testimony of the accountant that \$7,796.49 was available for the purpose of paying these subordinate officers for the year 1914, held that fact alone to be sufficient to justify their appointment for the year 1914. And since the judgment of the Court below sitting without a jury was for the plaintiff, this Court in reversing that judgment must assume that \$7,796.47 was in hand, as testified to by the accountant and following the decision in *Herman v. Guttenberg*, 86 L. 681, should hold that fact sufficient to protect the appointments.

If, however, this Court should hold that the broader question must be decided, then we contend, that not only was it proper by tax ordinance in 1913 to provide for the appropriations of 1914, but that it was the only lawful way so to provide, and further that since the year 1912 appropriations were not to be submitted to the voters of the town, but were to be fixed and adopted by council.

We shall now trace the tax legislation which we say leads to the result just claimed.

The charter of the Town of Guttenberg undoubtedly provides that the corporation shall "by ordinance" order to be raised by taxation a sufficient sum to pay town expenses not exceeding \$600.00 (P. L. 1859, p. 201, Sect. 7, as amended by L. 1868, p. 186) as claimed by defendant.

In 1884 an act was passed which provides that in all incorporated towns the qualified voters

of the town may at their annual town meeting, charter or municipal election, raise in each year by vote for the following, among other purposes, *such sum or sums of money as they shall deem expedient*:

1. For the support of the police department.
 2. For the salaries of officers not included under any other head.
 3. For the contingent expenses of the town.
- P. L. 1884, p. 326, Sect. 6, 4 C. S. 5418.

Guttenberg is an incorporated town and is subject to this legislation.

Herman v. Guttenberg, 87 N. J. L. 261.

Herman v. Guttenberg, 63 N. J. L. 616.

The foregoing act plainly permitted the voters of Guttenberg to vote any amount for police purposes.

The annual town meetings, charter or municipal elections referred to in this enactment were prior to 1905, held *in April of each year*.

The General Tax Act of 1903 provides that the clerk or other proper officer of each taxing district shall certify to the assessor on or before the third Tuesday of August a copy of the *annual tax ordinance* or resolution or *other evidence showing the amount to be raised by taxation for the purposes of the taxing district*.

As the law stood in 1904 the legal voters at their annual spring election voted their appropriations for the year in which the election was held and some time before the third Tuesday in August the amount so voted was certified by the clerk of the town to the assessor for levy in that *same year* and collector in December of that *same year*.

In this posture of affairs there was adopted
 “An act relative to the term of, election and

appointment and terms of office of officers elected or appointed in *towns, townships, boroughs and other municipalities*'' (L. 1905, p. 14). This act abolished the annual town meeting, charter or municipal elections (better known as spring elections) in the municipalities enumerated and provided that these elections should thereafter be held in November of each year.

Since the duties of the assessors of taxes then were, as they still are, *fully completed for the year* long before the November elections arrive, and since assessments as levied and imposed were then, as they still are, *already in the hands of the collector of taxes for collection when the November elections are held* it follows that the provisions that spring elections *should thereafter be held in November*, made it impossible to *continue the voting of appropriations in any year for collection and use in the same year*. In fact, the change from spring to November elections made it impossible to raise *any revenues by taxation* in towns and the other municipalities heretofore mentioned, in which appropriations were annually voted by the people *for the fiscal year 1905*. The Legislature, foreseeing this result, thereupon immediately adopted another act entitled "An act concerning the levy of taxes in certain municipalities" (Laws of 1905, p. 16) which provides in Section one that "In every municipality of this state *when tax levies are raised or fixed by vote of the people at the local or charter elections*, the said tax levies for each *annual tax levy for the succeeding taxing year* shall be *hereafter* voted for by the people on the first Tuesday after the first Monday in November in each year, * * * and not otherwise"; and by section two of the same act provided that "it shall be lawful for the Town

Council, etc., to provide at any time *before* July 1st next (1905) for the moneys required to be raised for all lawful purposes and placed in the tax levy for 1905."

The mandate of the Legislature in 1905 therefore clearly says that in towns such as Guttenberg thereafter the annual appropriation should be voted in the fall for the fiscal year next following and ever since 1905 down to 1912 the lawful procedure in Guttenberg was to vote appropriations at the fall election to be raised for use in the fiscal year next following.

It may also at this point be noted that the gap in the assessment and collection of taxes created in Guttenberg by the jump from spring to fall elections was specially filled by the second section of the act just quoted and this provision for the raising of appropriations for the year 1905 *without vote of the people*.

Unless there is some resolution subsequent to 1905 changing the procedure this would seem to settle the court practice for Guttenberg in the levying of its taxes. There is no change of procedure except as hereafter indicated.

The enactment which produced the only other change is found in Chapter 169 of the Laws of 1912, page 257. This act *takes from the voters the right to make appropriations and places in it the Board of Council*.

It provides that: "The governing body of any town * * * is hereby authorized to pass an ordinance or ordinances for the appropriations to appropriate annually such sum or sums of money as shall be necessary for *all* the general incidental expenses of said town, *including the support and makings of the free public schools of said town* for the then *current* year and the money or moneys so appropriated *or such part thereof* as

in the *judgment* of said governing body, shall be necessary to raise by taxation."

Question has been raised as to the proper antecedent of the words "then current year" in the foregoing enactment. The defendant contends that it means that all taxes shall be raised for the then current year. To this we cannot agree.

(1) Because of the legislative enactment hereinbefore referred to.

(2) Because existing legislation in regards to schools plainly indicates that the words "then current year" merely apply to the support and makings of free public schools of said town.

The fiscal school year runs from July 1st to July 1st (L. 1903, Second Special Sessions, page 238).

The town fiscal year runs from January 1st to January 1st (3 C. S. 3669, Section 740).

The annual tax ordinance or evidence of appropriation must still be in the hands of the assessor of taxes prior to the third Tuesday in August in order to make them part of the levies for the year in which the assessor receives the appropriations.

Towns under the school law of 1903 were organized under article seven of that act into Township—Incorporated Towns and Borough School Districts (Laws of 1903, Second Special Session, page 29).

Appropriations in such districts were then and are yet voted at school meetings held the third Tuesday in March of each year (Laws of 1903—Special Session, Sect. 79, page 30, and Section 95, page 36), and moneys thus voted to be raised were and are by the district clerk certified to the assessor of the taxing district in which such district shall be situate for collection (Section 95).

At the time of the passage of the act of 1912 then the situation was that school taxes were voted in March and were certified to the assessor prior to the third Tuesday in August for collection and was used of the fiscal year of the school commencing July 1st of the year in which they had been voted, while the town appropriations were voted in November for the fiscal year commencing on January 1st then next following. But this situation had to be taken care of by the draftsmen of the act of 1912 and they did it by providing in the act for the continuance of the practice as before it had expired prior to the passage of the act. In other words, the draftsmen of the act intended that school appropriations should continue to be raised for the then current year while town appropriations should continue to be raised for the next succeeding fiscal year and in order that there might be no lapse in the appropriations for the schools he inserted the express provision "including support and makings of the free public schools of said town for the then current year."

The construction thus contended for gives full force and effect to all of the provisions of the act. While the other construction contended for by the defendants would by implication repeal the express mandate of the enactment of 1905 and would necessitate the *omission of one year's taxation for township purposes* only to bring in a scheme providing for the raising of taxes in towns for current year within which the appropriation ordinance is passed.

That, therefore, for the foregoing reasons do we contend that the tax ordinance of 1912 provided for the revenues of the Town of Guttenberg for the fiscal year 1913, and that the tax ordinance of the year 1913 provided for the revenues of the town for the fiscal year 1914.

There is no claim that such an ordinance was not passed. There is no claim that such an ordinance did not contain ample provision for the pay, both of the subordinate officers and of the regular police forces. The testimony of Mr. Chase, the accountant called for the plaintiff, absolutely proves the fact that sufficient moneys had thus been raised for this purpose and would appear from an examination of the tax ordinance of 1913 offered in evidence at pages 90-91 and would also appear from an examination of the tax roll of 1913 showing the amount of the local appropriations at \$41,300 (page 123) if the defendant had chosen to print these exhibits.

Since the defendant has neglected to do so and since the Trial Court has found for the plaintiffs the presumption is that the omitted testimony would conclusively show the existence of a sufficient appropriation. (*Dordoni v. Hughes*, 83 N. J. L. 355.)

Point III.

Suit No. 2.

In suit No. 2 plaintiff assails proceedings raising two objects which we will now deal with.

The police duties performed between May 1st, 1914, and November 16th, 1914, were not performed in violation of the inhibition carried by the writ of certiorari while the same was pending in the Court of Errors and Appeals before decision (*Herman v. Guttenberg*, 86 N. J. L. 361).

The defendant in his brief says, "up to May 1st the plaintiffs pretended to be performing such duties as they did perform under appointment of ordinance of Special Ordinance and designated by the rule of January 1st, 1914. This pretense

was made because of the allowance of the writ of certiorari in the Herman case."

The finding of the Trial Judge in these suits in favor of the plaintiffs destroyed any right, if right it was, in the prosecutor to argue that the plaintiffs owed the resolution of January 1st, 1914, was a pretense. It is omitted and the Trial Court found that the allowance of the certiorari suspended the operation of the ordinance creating the day and night police until the Supreme Court had passed upon the validity of the same and left the town of Guttenberg without any police protection whatever beginning January 1st, 1914, and in order to meet *this condition* the Board of Council of Guttenberg on January 1st, 1914, went back of the practice involved before the adoption of the police ordinance aforesaid and adopted a resolution appointing six subordinate officers and agents under the act of 1859, Section 16, for the purpose of giving the town such police protection as the wearing of uniforms might provide (page 38, folio 30).

This finding absolutely settles the question of the good faith of the appointment of the subordinate officers.

The Supreme Court dismissed the writ of certiorari and a judgment of dismissal was entered upon the 24th day of April, 1914. From this judgment of dismissal an appeal was taken on May 6th, 1914, and upon argument of the appeal the judgment of the Supreme Court was affirmed on November 16th, 1914.

Council for defendant now says, "The question raised and for this Court's determination, is whether the allocatur was vacated by the entry of the judgment of the Supreme Court or whether it was continued by the appeal to the

Court of Errors and Appeals." We do not agree with this settlement of the question. The question is: "Was the implied supersedeas contained in the allowance of the writ destroyed by the entry of judgment dismissing the writ? We contend it was.

The supersedeas is in itself a writ containing a command to stay proceedings at law. Prior to the adoption of the new practice act of 1912 the writ of error was a new proceeding and the writ could only be directed to the Supreme Court upon judgment final. Prior to the new practice act the Supreme Court certainly could not grant a stay of supersedeas beyond the period of its own control over the object, *i. e.*, beyond the date of final payment in the cause and prior to the new practice act, the supersedeas of the Supreme Court expired by its own limitations upon judgment final of the Supreme Court. *Lantz v. Hightstown*, 46 N. J. L. 102.

Prior to the adoption of the new practice act, plaintiff in error desiring continued stay made application therefore to the Court of Errors which Court in the exercise of its power and at its discretion thus either granted or refused such continued stay. The practice act of 1912 has made no change in the fundamental rules for review of actions at law as in error. *Webster v. Freeholders of Hudson*, 86 N. J. L. 256.

The conceded practice under the new practice act in certiorari cases has been to apply to the Court of Errors for a continuance of the stay of the supersedeas upon dismissal of the certiorari. The defendant raises his claim that the stay of the certiorari continues solely upon the language of the new practice act that the appeal is a step in the cause and is deemed to remove to the Appellate Court any record of the cause and all

orders, proceedings and documents made, taken or filed therein, whether or not they are actually included in the transcript of the records sent to the Court.

While the appeal is undoubtedly now a step in the cause it is a step after *final judgment* in the Supreme Court and until reversed by the Supreme Court the judgment of the Supreme Court stands in all of its force and vigor. Any other construction would invade the rights of the Supreme Court to render final judgment and would be void as against the constitutional limitations, nor does giving full force and effect to the dismissal of the writ in any way prevent the bringing up into the Supreme Court among other things the implied order for a stay contended in the allocatur of the writ of certiorari. In fact, it is the very act of dismissing this implied stay and of approving the proceedings below which is brought up on appeal in certiorari cases. The grievance suffered by the appellant being found in the refusal of the Court below to further stay the proceedings brought up the sole object of the supersedeas under the old practice so to maintain proceedings reviewed in *status quo* until the Supreme Court could pass upon their sufficiency and legality. No new rights are created by the practice act of this respect and to hold that the supersedeas continues until the Court of Errors had passed upon the question would be to alter and increase the force and effect of the implied supersedeas contended in the allocatur.

We, therefore, submit that the supersedeas expired by its own limitations upon entry of judgment final in the Supreme Court and if the supersedeas did expire by its own limitations upon the entry of judgment final, where did it

leave the Town of Guttenberg and the police force appointed under the ordinance creating the police department?

Police officers are officers of a municipality and not employees.

The plaintiff in action No. 2 had been duly appointed and had been sworn into office prior to the issuance of the writ of certiorari. The allowance of the writ suspended the operation of the ordinance and suspended the resolution of appointment. The dismissal of the writ removed this supersedeas and without further action by the Board of Council, reinstated the plaintiff in action No. 2 as police officers of the town who were from that moment on *in duty bound* to perform the duties of their office without any express direction or order to that effect from the Board of Council.

That this is so is emphasized by the fact that they held office after appointment under a tenure of office act and are therefore entitled to their position as such officers during good behavior until they are removed from office or until their offices are abolished in the effects provided by the tenure office act and the decisions of our courts.

Insofar as these officers performed the duties of police officers after May 1st, 1914, they had the right since the police ordinance gave them a tenure to demand pay under that ordinance, independent of any action taken by the council placing them back to work as policemen.

As the said subordinate officers had been appointed for a year and as some question might arise as to their right to draw what pay for the balance of the year *in addition* to the police salary drawn and as neither council nor the men ever intended to draw double compensation, the

resignation of the ordinance officers was asked and taken as of May 1st, 1914. It was asked and taken solely for the purpose of stopping these men who then had been sustained in their positions as regular policemen from claiming double compensation for services rendered and we contend for that purpose these resignations are effective.

For the foregoing reasons we submit that the duties performed between May 1st, 1914, and November 16th, 1914, were not performed in violation of any inhibition carried by the writ of certiorari, but was lawfully performed by members of the then police department of the Town of Guttenberg.

Point IV.

There was an appropriation made for the payment of the salary of the police officers appointed under the ordinance for the services rendered during the year 1914 and it is immaterial whether any such appropriation was made for the year 1915.

The argument showing the existence of a fund from which to pay the police officers for the year 1914 has heretofore been advanced, was also the argument showing the legality of appropriations for the purpose of the year 1914. It is conceded that owing to the refusal of the Mayor of the Town of Guttenberg in the year 1914 to sign the tax ordinance then adopted for the year 1915, no appropriations were made or voted for police purposes for the year 1915. It is such failure or refusal to make appropriations prevented the plaintiffs, policemen, from recovering for their services in the year 1915, viz. from January 1st, 1915, to January 18th, 1915, when the ordinance which created the de-

partment was abolished. We contend that it does not.

The police department having been lawfully established, motion having been lawfully adopted, and being directed in the position of their offices by tenure of office act ("an act representing police departments of towns regulating the towns and terms of officers and men employed in such departments." Law of 1907, page 50). We contend that it was impossible for town council, practically to remove the men from office by failure to provide for their pay. Town Council cannot in this way be permitted to evade express mandate of the tenure of office act.

Under this point counsel for the defendant refers to *Buckley v. Guttenberg*, 87 N. J. L. 436, and quotes at length from the opinion. He does this for the sole purpose of wrongfully creating a prejudice against these pledges in the consideration of this case. The question of extravagance or non-extravagance is not before the Court nor can the Court consider the same in deciding this case. The police officers are not chargeable with any questions of policy of the Town Government. They had the right to accept employment under the police ordinance. The Court of Errors has so held. They have performed the duties of their offices and have not been paid. They are entitled to their compensation.

We respectfully submit that the judgment brought up for review should be affirmed.

Respectfully submitted,

J. EMIL WALSCHEID,
Of Counsel with Defendants in Appeal.

June Term, 1918.

New Jersey Court of Errors and Appeals

JOHN HANDWERK, *et. als*,
Plaintiffs-Defendants on Appeal,

AGAINST

TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,
Defendant-Plaintiff on Appeal.

At Law.
Two Cases.

BRIEF FOR PLAINTIFF ON APPEAL.

Statement.

Two cases are considered in this brief and are printed together in the printed State of Case.

The first suit (Case No. 1) is brought by John Handwerk, Stephen Bostwick, John Buckley, Peter Handwerk, William Tallman and George J. Bell, to recover police salaries from the defendant for police duties alleged to have been performed by them under a resolution adopted by the Town of Guttenberg on January 1, 1914, which resolution is as follows:

“Resolved: that the following subordinate officers or agents be and are hereby appointed for the ensuing year at the salary set opposite their names, to be paid in equal semi-monthly installments at the middle and end of each month:

John Handwerk	\$800.00 per year
Stephen Bostwick	780.00 per year
John Buckley	780.00 per year
Peter Handwerk	780.00 per year
William Tallman	780.00 per year
George J. Bell	780.00 per year"

This suit covers services said to have been performed by said plaintiffs under said resolution, from the first day of January, A. D. 1914, to the first day of May, A. D. 1914.

Judgment was ordered for the full amount claimed at the above rates, for the above period.

The second suit (Case No. 2) is brought by John Handwerk, John Buckley, Peter Handwerk, Christopher Barth, William Tallman and George Bell, to recover police salaries from the defendant for police duties alleged to have been performed by them under appointed of the Town Council, to fill offices created by an ordinance adopted by the Town of Guttenberg on December 1, 1913, as amended on December 15, 1913, providing for the positions of a captain of police (filled by the appointment of John Handwerk) at a salary of \$1000.00 per annum, a sergeant of police (filled by the appointment of John Buckley) at a salary of \$900.00 per annum, and five patrolmen (filled by the appointment of the other plaintiff's) at \$840.00 per annum each.

This ordinance was adopted pursuant to the provisions of an act entitled: "An Act concerning incorporated towns in this state and certain officers thereof," (P. L. 1884, page, 326; 4 Comp. Stat., 5415).

The suit covers services said to have been rendered under said appointments from May 1, 1914 to January 15, 1915.

Judgment was ordered for the full amount claimed at the rates specified in the ordinance, for the above period.

The reason, as alleged by plaintiffs, for the passage of the foregoing resolution of January 1, 1914, was that all operations under the ordinance of December 1, 1913 were stayed by a writ of certiorari allowed on December 20, 1913, in the case of Herrmann vs. Guttenberg (86 N. J. L., 681) which writ was dismissed by the Supreme Court by judgment entered on April 24, 1914, from which an appeal was at once taken to the Court of Errors and Appeals and decided by that Court at the November term, 1914. (Case, Pages 64 and 65.)

The plaintiffs seem to concede that during the pendency of this writ of certiorari in the Supreme Court they could not recover the salary fixed by the ordinance under its review and therefore their suit is brought for the compensation fixed by the resolution from January 1, 1914 to May 1, 1914, which was a few days after the entry of judgment dismissing the writ in the Supreme Court.

Plaintiffs seem to contend, by their second suit, that they were entitled to compensation under the ordinance of December 1, 1913, notwithstanding the pendency of the suit on certiorari, on appeal in the Court of Appeals, and notwithstanding no action was taken by the Town Council of Guttenberg to change their status until December, 1914, when at the Council meeting of December 1, 1914, the resignation of the plaintiffs as "ordinance officers," "to go into effect *as of the first day of May, 1914*" was presented, together with a report of the Chairman of the

Police Committee, and a resolution passed in the following words:

“Resolved, that the resignations of John Handwerk, John Buckley, Christopher Barth, Peter Handwerk, George Bell, Steve Bostwick and William Tallman as ordinance officers of the Town of Guttenberg, to go into effect on the first day of May, 1914, be and the same are hereby received and accepted.” (Case Pages 83 and 84.)

The Court will kindly note that Christopher Barth was not appointed an ordinance officer, with salary, under the resolution of January 1, 1914 (this resolution is printed on Page 86, line 40, and page 87).

Christopher Barth was appointed an ordinance officer under a resolution adopted at a meeting held on January 5, 1914, reading as follows:

“Resolved, that Charles Rademacher and Christopher Barth be and are hereby appointed special subordinate officers or agents without pay, their duties to consist of enforcement of ordinances and such other duties as the Town charter provides, and be it further resolved that all special officers’ badges with the exception of the two just issued be and are hereby recalled.” (Case, Page 87, line 36, and page 88.)

Notwithstanding Christopher Barth was not appointed ordinance officer by the resolution of January 1, 1914, but was appointed such officer by resolution of January 5, 1914, *without pay*, he joined the others in signing this resignation.

SUIT NO. 1.

As to plaintiffs' right to recover for police services rendered under employment of resolution of January 1, 1914 (*supra*).

POINT I.

The resolution of January 1, 1914 was repealed (either directly or by implication) by the resolution of January 5, 1914 (Case Page 88, Line 10).

The resolution of January 1, 1914 is as follows:

"Resolved, that the following subordinate officers or agents be and are hereby appointed for the ensuing year at the salary set opposite their names, to be paid in equal semi-monthly installments at the middle and end of each month:"

(John Handwerk, at \$800 per year and five other men at \$780 per year.)

The resolution of January 5, 1914 (claim by us to repeal the foregoing) is in the following words:

"Resolved, that Charles Rademacher and Christopher Barth be and are hereby appointed special subordinate officers or agents without pay, their duties to consist of enforcement of ordinances and such other duties as the Town charter provides, and be it further resolved that all special officers' badges with the exception of the two just issued be and are hereby recalled."

The statutory authority for the appointment of the officers as provided for in both of the foregoing resolutions is found in the Charter of Guttenberg, under Section 15 of the laws of 1859, on page 206. That Section reads as follows:

"15. And be it enacted, That the said corporation shall have power to appoint such number of subordinate officers and agents as they may deem proper to enforce all such ordinances as they may be authorized by this act to pass, which officers shall have power to arrest all persons violating any of the ordinances of this corporation etc."

Section 7 of the same Charter provides as follows:

"7. And be it enacted, That for the payment of the expenses incident to said corporation, other than those relating to streets, it shall be lawful for said Councilmen, by ordinance, to order a sufficient sum, not to exceed \$200 in any one year, to be levied for that purpose, etc."

Under subsequent legislation, this amount was increased to the sum of \$600 (P. L., 1868, page 186).

It would seem, therefore, that the resolution of January 1, 1914, establishing expenditures for services of subordinate officers appointed under the Charter provisions amounting to \$4,700.00 per year well might have afforded the Councilmen just cause for re-consideration, and that the resolution of January 5, 1914 expressed that re-consideration when they concluded to recall all special officers' badges, which apparently they

considered the emblem of legal authority, and appointed two officers to perform the Town police services without pay. Whether or not such was their intention, we respectfully insist that such was the result of the corporate action of January 5th, and that when all special officers' badges were called in, the Council intended to, and did in fact, rescind all special police officers' powers theretofore conferred, which of course included all of the plaintiffs except Barth, who agreed to serve without pay, by accepting such assignment.

That such was the legislative intent, we think, is further evidenced by the situation which existed prior to January 1, 1914.

Up to December, 1913, all police duty of the Town was performed by special police appointed under the provisions of the Town Charter above specified, but in December, 1913, the Town adopted an ordinance creating a police department, under powers conferred by the Legislature (P. L. 1884, page 326; 4 C. S., 5415) and coincident therewith, it passed the following resolution:

"All special police officers' badges be and are hereby recalled and all appointments of special officers be, and are hereby revoked from and after December 31, 1913." (Case, page 160, line 30.)

It was thus clearly the intention of the Council to substitute the police department created by the ordinance of December 1, 1913 in place of the police force theretofore existing, which was to be terminated on December 31, 1913.

The operation of the ordinance was suspended by reason of a writ of certiorari, but the operation of the resolution of December 1, 1913, ter-

minating the powers of all police officers, became effective on January 1, 1914, and at that date there was no police force in the Town, and, consequently, the Council sought a temporary relief by the enactment of the resolution of January 1, 1914. This would have been perfectly proper, had its provisions been in compliance with the Charter requirements and not a mere evasion of the effect of the writ of certiorari.

That it was intended as a mere evasion of the writ, we think, is shown by the testimony of plaintiff Handwerk and the subsequent conduct of the plaintiffs, coupled with the action of the Town Council. The case shows that such police work as was performed by any of the plaintiffs, was performed in the same manner and was of the same character, from January 1, 1914 to January, 1915 (which work, defendant claims, was performed only sporadically).

On December 1, 1914, the plaintiffs (including Christopher Barth) presented to the Town Council at its meeting, a document signed by them, in the following language:

"We, the undersigned, having heretofore been appointed ordinance officers by resolution adopted on the first day of January, 1914, do hereby respectfully resign as ordinance officers, such resignation to go into effect, as of the first day of May, 1914."

At the same meeting, the Town Council adopted the following resolution:

"Resolution that the report of the Chairman of the police committee be received and accepted and that the action of the Chairman of the Police Department in ordering the

police force to work as of May 1, 1914, be and the same is hereby ratified and confirmed." (Case, page 83.)

The apparent and actual reason for this action was to enable the police force to obtain the larger salary provided by the ordinance, rather than the salary fixed by the resolution of January 1st.

During that period of time, however, and up to the November Term, 1914, the ordinance was under review in the Court of Appeals, on appeal from the Supreme Court.

Even if this appeal did not stay the proceedings under said ordinance, (and we claim that it did) we insist that the resignation made in December, 1914, could not be given effect *as of first day of May preceding*.

While the difference in salaries fixed by the ordinance and the resolution was slight, yet the principle sought to be established is vicious.

In Barth's case, he had accepted appointment under the resolution of January 5, 1914 and had agreed to serve "without pay."

Notwithstanding this agreement, he is awarded the salary fixed by the ordinance.

POINT II.

No provision was made for the payment of the compensation of these subordinate officers or agents by the Council.

By the Charter of Guttenberg, it is provided that the corporation shall "by ordinance" order a sufficient sum to pay town expenses, not exceeding \$600.00 (P. L. 1859, page 201, Section 7; amended, P. L. 1868. page 186).

No ordinance for this purpose was ever adopted, and the amount fixed in the resolution far exceeded the statutory limitation.

In the Court below, plaintiffs argued that the payment of this sum is justified by the Act of 1912, page 257, Chapter 169.

This is an Act entitled "An Act to authorize any town in this state to pass ordinances and fix appropriations for the general and incidental expenses of the town, and to provide for the raising of the same by taxation."

The Act provides that the governing body of any town is authorized and empowered "to pass an ordinance or ordinances for the appropriation of, and to appropriate annually such sum or sums of money as shall be necessary for all the general and incidental expenses of said town, including the support and maintenance of the free public schools of said town, *for the then current year*, and the money or moneys so appropriated or such part thereof as in the judgment of said governing board shall be necessary, shall be raised by taxation. No ordinance for the purpose aforesaid shall be passed by the governing body of any such town, unless the same shall have been introduced at a pre-

vious stated meeting and shall have been passed by a majority of the members of said governing board, and no such ordinance shall take effect until five days after it shall have been published in the official newspaper of the town, and if there be none, in at least one newspaper published in the county and circulating in the town."

The plaintiffs attempted to show, and apparently seek to rely upon the tax ordinance passed in the year 1913 (Case page 123).

This ordinance is not the ordinance designated in the Act of 1912. That Act provides that the ordinance shall make appropriation for all the general and incidental expenses of the town "*for the then current year*," and clearly an ordinance passed in 1913 appropriating for the year 1914 would not be an appropriation for the "*then current year*," nor does the 1913 ordinance, in respect to publication etc., comply with the requirements of the 1912 Act.

This question was raised in the case of Herrmann vs. Guttenberg (86 Law, 681) and in considering it, Justice Swayze said:

"Whether the Council had the right, in 1913, to make an appropriation for 1914, is, I think, a more difficult question, for it seems to be probable that under the Act of 1912 the words 'for the current year' applied to all the appropriations, and not merely, as Mr. Collins contended, to the school appropriations. But I do not think it necessary now to decide that question."

No ordinance for appropriations was passed by the Town Council in the year 1914, nor was any appropriation made for the payment of police salaries or subordinate officers' salaries (Case page 121).

SUIT NO. 2.

As to plaintiffs' right to recover for salaries from May 1, 1914 to January 1915, under the ordinance adopted December 1, 1913.

POINT I.

Such police duties as were performed between May 1, 1914 and November 16, 1914 were performed either

1. In violation of the inhibition carried by the writ of certiorari, while the same was pending in the Court of Errors and Appeals, before decision (Herrmann vs. Guttenberg, 86 L., 681) or

2. Under authority of the resolution of January 1, 1914 (if such resolution were not repealed by the resolution of January 5, 1914) or

3. Without legal authority whatsoever.

Such duties as were performed between January 1st and May 1st, 1914, were continued to be performed (if performed at all) during the latter six months of the year.

With respect to the nature of same, John Handwerk (the only plaintiff sworn as a witness) testified as follows:

Q. "Well, the fact is that you did not do any different work as a patrolman than that which you did as an ordinance officer, did you?"

A. "I cannot say that I did."

Q. "It did not make any difference to you except salary?"

A. "Except salary, the same hours."
(Case page 53.)

Up to May 1st, the plaintiffs pretended to be performing such duties as they did perform under appointment as ordinance or special officers and designated by the resolution of January 1, 1914.

This pretense was made because of the allowance of the writ certiorari in the Herrmann case.

If this resolution was in force and not repealed by the resolution of January 5th, as defendant contends, then such services as were performed continued to be performed until some new status was created, either by a resignation of the officials under said appointment or by some affirmative act of the Town Council. No action was taken by either plaintiffs or Town Council until December 1, 1914, when an omnibus resignation signed by the six men appointed under the resolution of January 1st and one appointee (Barth) under the resolution of January 5th, was presented to the Town Council and at that meeting (December 1, 1914) the police committee ordered the police force for work *as of May 1, 1914*. (Case page 14.)

Defendant contends that such action was legally inoperative and ineffective to accomplish any such result. If services had been rendered, they were rendered under the resolution of January 1, 1914, if that then existed, and if not in existence, then they were rendered without legal authority whatsoever, or, in defiance of the writ, up to the November Term of the Court of Errors, when final judgment was entered in the certiorari case.

In plaintiffs' brief, filed with the Court below, counsel very frankly states that "During that period of time (while the allocatur existed) it was *illegal* for the Town to accept any services under these police ordinances; and plaintiffs

could not recover for services thus rendered; but it was not illegal to adopt a resolution providing for police services under an entirely different Act" (Page 16 of Brief).

The question raised and for this Court's determination is whether the allocatur was vacated by the entry of judgment in the Supreme Court or whether it was continued by the appeal to the Court of Errors.

The appeal in the certiorari case was taken under the Practice Act of 1912, which provides for the abolition of bills of exception and writs of error in civil cases and in lieu thereof an appeal, which appeal "is a step in the cause, and is deemed to remove to the appellate court the entire record of the cause and all orders, proceedings and documents made, taken or filed therein whether or not they are actually included in the transcript of the record sent to the court."

If, then, the appeal be considered as a "step in the cause," it would seem to follow that the stay under allocatur would also be removed for the determination of the appellate court and especially as the appellate court had power to pronounce an original judgment.

State, Hoxsey vs. City of Paterson, 39
Law, Page 489.

And in Lantz vs. Highstown, 46 Law, Page 104, the Court said: "The writ of error might have been a supersedeas of any further action of that Court (Supreme Court) if it had any further judicial act to perform in relation to it. In case of affirmance of some proceeding in an inferior tribunal where the record is retained in this Court for the purpose of execution or other act which the Supreme Court could assert in concluding the suit, a writ of error from the judgment of affirmance would, in common law, operate as a stay."

POINT II.

There was no appropriation made for the payment of the salary of these police officers appointed under the ordinance, for services performed during the year 1914 or the year 1915.

The police ordinances of December 1, 1913 was adopted under the powers conferred by the Act of 1884 (P. L. 1884, Page 326) which is an Act entitled: "An Act concerning incorporated towns in this state and certain officers thereof."

Under this Act, the governing body of each incorporated town is empowered to enact ordinances "to establish, regulate and control the day and night police, and to regulate and define the manner of their appointment and removal, their duties and compensation" (P. L. 1884, Page 328, Paragraph 27).

This act further provides as follows:

"6. Be it enacted, that the qualified voters of the several incorporated towns of this state, shall have power to raise in each year, by vote, at the annual town meeting or charter or municipal election, such sum or sums of money as they shall deem expedient for the following purposes:

V. For the support of the police department;

XIII. But no appropriation shall be raised or ordered except by a majority of all the voters voting at such election.

8. And be it enacted, that the council or other governing body of any such incorporated town shall have power to borrow money

temporarily in the name of such incorporated town, in anticipation of appropriated revenues not exceeding the amount of such anticipated revenues so appropriated."

No appropriation for police purposes was made by the voters of the Town at any municipal election, either in 1913 or 1914, and no moneys were borrowed by the Council in anticipation of any such appropriation, nor was any appropriation made in 1914 for any Town purposes.

In the case of *Herrmann vs. Guttenberg*, supra, this fact was urged as a reason for setting aside the ordinance but the Supreme Court held that that was not a sufficient reason for setting aside the ordinance as the Council had power to establish the police force under this Act, leaving open, however, the question as to how those serving could secure their pay.

In this case, Justice Swayze said:

"I think that the Act of 1884 authorizes the Council to establish a police department; and while in order to make their action effective an appropriation by the voters was necessary under that Act, the fact that there is no antecedent appropriation could not effect their right to establish the police department. The two Acts must concur under the statute of 1884. It follows that they had a right to make appointments of the policemen, and they had money enough in hand *to pay them for the year 1913*; that, it seems to me, prevents the Court from setting aside either the ordinance or the resolution of appointment." (86 L., 681.)

This opinion was adopted by the Court of Errors on appeal.

If, then, the concurrence of the two Acts, viz: the establishment of the police department and the fixing of appropriations by the voters, was necessary to make these appointments effective, then they have not become effective and no right of recovery can be based thereon.

We would respectfully urge this Court to note that this action is not brought on the *quantum meruit* for services rendered but is based upon the legality of the services rendered under the resolution of January 1st and the ordinance of December 31st.

If it were upon the *quantum meruit*, the proof fails to disclose what value, if any, the services rendered, if any were rendered, had.

Both the ordinance and resolution were adopted for ends not beneficial to the Town and at the very first opportunity, were repudiated by the voters, who dislodged the Mayor and Council who had adopted them, and the ordinance was repealed at the first opportunity, to wit, in January, 1915.

This repealing ordinance was also reviewed by the Supreme Court on certiorari, and it may be pertinent to quote some excerpts from the opinion of Justice Kalisch delivered therein. Among other things, he said:

"We gather from the testimony submitted that prior to the adoption of the repealing ordinance the Town of Guttenberg had under the ordinance of 1913, a police force consisting of a captain of police, at a salary of \$1,100 per annum, a sergeant of police at a salary of \$900, and five policemen, whose salary in the aggregate, amounted per an-

num to \$4,200, making the total expense of the police department for salaries alone, \$6,200 per annum."

"What the present board of Councilmen intended to accomplish by the repeal of the ordinance of 1913, was to rid the Town of an extravagant expenditure for police services, which appears to have been an issue at the election on which several of the members of the Board of Councilmen were elected."

"The avowed purpose of the Board of Councilmen is to reorganize the police department and put it on an economical basis, by abolishing the positions of captain and sergeant and reducing the force of five policemen to three, at reduced salaries."

* * * * "The good faith of the Board in this instance has been questioned. We are asked to infer that the Board acted fraudulently because it had persistently refused, from the inception of its official existence in 1914 to vote any pay for the present police force. In this connection, we cannot overlook the fact, as appears from the evidence, that the ordinances of 1913, from their inception were looked upon with disfavor by the tax payers of the Town of Guttenberg, in that it saddled upon them a burden of extravagance, and that it was this situation which resulted in bitter opposition to those officials who were responsible for that legislation, and in their overthrow at the election held in 1914, and, at the same time, brought into power the present Board."

Buckley vs. Guttenberg, 87 N. J. L.,
page 436-437-438.

The Town is still fighting against this extravagance and against being obliged to pay for services either not performed, or if performed, still of so much less value than the amount sought to be recovered in this suit.

We respectfully contend that the judgment in each of these cases is erroneous, and should be reversed.

Respectfully submitted,

WARREN DIXON.
Of Counsel with Plaintiff on Appeal.

New Jersey Court of Errors and Appeals

JOHN HANDWERK, et als, <i>Plaintiffs-Defendants on Appeal,</i>	}	
AGAINST		At Law.
TOWN OF GUTTENBERG IN THE COUNTY OF HUDSON,		Two Cases.
<i>Defendant-Plaintiff on Appeal.</i>		

BRIEF FOR DEFENDANT-PLAINTIFF ON
APPEAL

WARREN DIXON,
Of Counsel with Defendant,
Plaintiff on Appeal.
