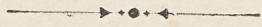


NEW JERSEY

Court of Errors and Appeals.



THE MAYOR, &c., OF HOBOKEN,

vs.

GEORGE W. BAILEY.

} IN ERROR.

JOHN C. BESSON,

*Attorney of Plaintiffs in Error.*

Points relied on by the Plaintiffs in Error for the reversal of said judgment:

1. The following resolution, to wit: "Resolved, That a city scrip for the amount of \$350, in addition to the county bounty of \$400, be issued to every drafted man

or volunteer from this city, entering the service under the late call of the President of the United States for 300,000 men ; *provided*, such drafted man or volunteer shall enter the service of the United States, or furnish an acceptable substitute, for one or more years, and shall be duly credited to the quota of this city under the present call ;" purporting to have been passed by the Mayor, &c., of the City of Hoboken, was passed without lawful authority, and was and is null and void.

2. The Mayor and Council of the City of Hoboken never have been legally authorized to issue scrip for the payment of bounty money to volunteers to serve in the army of the United States.

3. In order to recover in an action of assumpst upon an alleged contract, it must be shown in evidence by the plaintiff that the alleged offer of the defendant was known to the plaintiff ; that he considered and accepted the same, and that he gave notice of his acceptance thereof to the defendant before such offer was retracted.

4. An action brought in the name of another without his authority, is a groundless and unlawful suit ; and there can be no presumption of authority to bring such suit without proof of an assignment of the chose in action upon which such suit is brought by the plaintiff of record, to the person prosecuting such suit.

5. When it appears that between the making of an offer or proposition and the alleged acceptance thereof, a considerable time has elapsed ; and that the circumstances relating to the subject matter of the offer have materially changed so that the offer is more favorable to the alleged acceptor at the time of the alleged acceptance than it would have been at the time of making the offer, there is sufficient evidence of fraud which should be submitted to and decided upon by the jury.

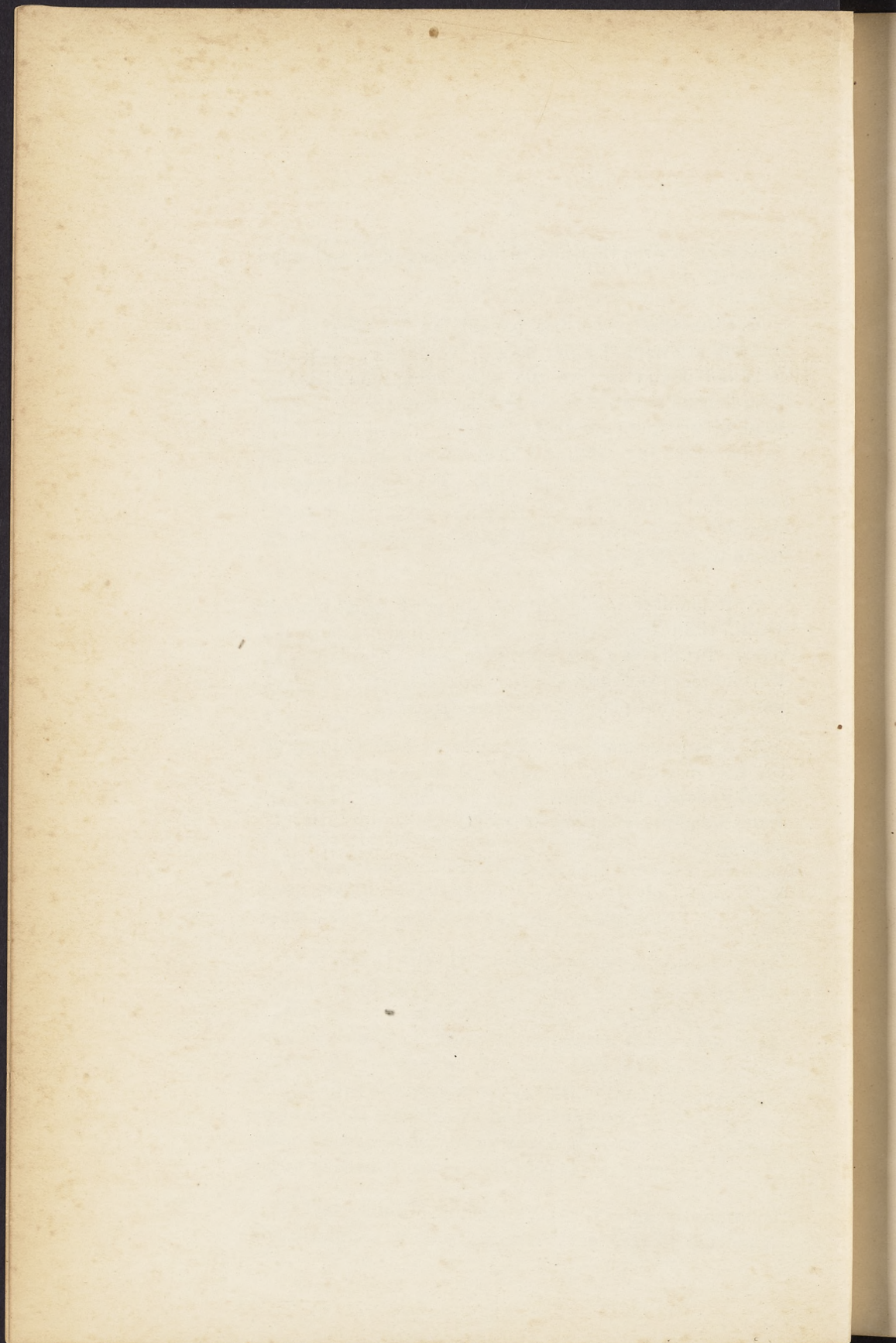
6. The plaintiff cannot recover on the strength of the resolution of the Council of the City of Hoboken,

unless he proves that he had knowledge of it, and acted upon it.

7. The bounty was only payable by the terms of the resolution to the drafted man or volunteer. The city was not bound to give the scrip except on demand. The demand must be made by the volunteer or drafted man, or his agent for that purpose. There is no proof in the case of any authority in Hatfield to authorize him to make the demand for plaintiff. The demand was not made for plaintiff on his account. The city was not bound to give scrip to any assignee. There was no demand by or for plaintiff.

8. If plaintiff would recover he must bring himself within the precise terms of the resolution creating the offer. In this case the resolution only offered bounty to volunteers and drafted men "from this city." It does not appear that plaintiff was from Hoboken.

9. A promise made by "The Mayor and Council of the City of Hoboken," a municipal corporation, to pay bounty money to a drafted man or volunteer who shall enter the military service of the United States, is *nudum pactum*.



# New Jersey Court of Errors and Appeals.

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GEORGE W. BAILEY

*ads.*

THE MAYOR AND COUNCIL OF THE CITY  
OF HOBOKEN.

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*In Error.*

*Points for De-  
fendant in  
Error.*

I.—The copy of the President's proclamation of December 19, 1864 (See page 55), was duly authenticated and rightly received in evidence.

*U. S. Stat. at Large, Vol. 1, p. 68 Sec. 5.*

*Gilman vs. Riopelle, 18 Mich., 145.*

*Smith vs. United States, 5 Peters, 292.*

*Hawthorne vs. Hoboken, N. J. Sup. Court,  
Feb. T., 1871.*

*U. S. Stat. at Large, Vol. 13, p. 379 and  
p. 750.*

II.—The resolution of the Mayor and Council of Hoboken, passed March 1865 (page 57), was within the powers of the municipal corporation.

*Charter of City, Pam.p. Laws of 1855,*  
p. 448.

*Supp. to Charter, Pam.p., Laws of 1865,*  
p. 161, *Secs. 4 and 5.*

*State (Ruckman, Pros.) vs. Demarest, 3*  
*Vroom, 528.*

*Taylor vs. Thompson, 42 Ill., 9.*

*Krinkle vs. Franklin, 13 Minn., 127.*

III.—The Justice at the Circuit rightly refused to nonsuit the Plaintiff upon any of the grounds assigned because—

1. The resolution of the Mayor and Council was valid.
2. The Plaintiff's enlistment and credit to the city of Hoboken were effected on the strength of the offer contained in that resolution; so that, without that resolution, the credit would not have been received.
3. The offer contained in the resolution becomes a contract, on which an action may be maintained in the Plaintiff's name against the city by reason of his enlisting and being credited in the quota of Hoboken.

4. The volunteering and crediting constitute a sufficient consideration to sustain the promise by the city.
5. Hatfield's interest is not material for the maintenance of this suit, but if it is, it fully appears, and is sufficient to justify a recovery in this case in Plaintiff's name for the benefit of Hatfield.

The Assignment need not be such as enables the assignee to bring suit in his own name to justify a court of law in recognizing and protecting it.

*Sloan vs. Astley, 2 Green, 509.*

6. The city had legal authority to issue scrip, *i. e.* a certificate of indebtedness. Having the authority to contract the debt, it had authority, *ipso facto*, to issue an evidence of the debt.

*Commonwealth vs. Pittsburg, 34 Pa., St. 496.*

*R. R. Co. vs. Evansville, 15 Ind., 395.*

*Galena vs. Corinth, 48 Ill., 423.*

*De Voss vs. Richmond, 18 Gratt., 338.*

*Seybert vs. Pittsburg, 1 Wall, 272.*

*Stratton vs. Allen, 1 C. E. Gr., 229.*

*Lucas vs. Pitney, 3 Dutch., 221.*

*Hawthorne vs. Hoboken, 3 Vroom, 172.*

*Ketchum vs. Buffalo, 14 N. Y., 356.*

IV.—The evidence offered by Defendant (page 47) as to a conversation between Reed and Hatfield and Wehle on April 13, 1865, as to Reed's idea of the meaning of the resolution of March 18, 1865, was immaterial and rightly overruled.

1. Plaintiff's enlistment and credit were on April 12th, and what Reed said next day could not injure the rights acquired thereby.
2. Reed's opinion as to the meaning of the resolution was no help in its construction.

V.—There was nothing in the case that could justify the jury in finding such fraud as would prevent a recovery.

VI.—On the undisputed facts in the case the verdict was necessarily for the plaintiff.

JONATHAN DIXON,

*Of Counsel for Plaintiff.*

# Court of Errors and Appeals.

THE MAYOR AND COUNCIL OF THE  
CITY OF HOBOKEN,

v.

GEORGE W. BAILEY.

*In Error. Writ.*

Returnable June Term, 1872.

JOHN C. BESSON,  
*Attorney of Plaintiff in Error.*

NEW JERSEY, *ss: The State of New Jersey to the Chief  
Justice and other Justices of our Supreme* 10  
[L.S.] *Court of Judicature, Greeting:*

For as much as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said supreme court of judicature, before you, between George W. Bailey, plaintiff, and The Mayor and Council of the City of Hoboken, defendant, in a plea of trespass, on the case upon promises, manifest error hath intervened, to the great damage of the said The Mayor and Council of the City of Hoboken, as it is said; we being willing that the error, if any there be, should, in due manner, be corrected, 20 and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send,

under your seal, the record and proceedings aforesaid, with all things touching the same, to our judges of our court of errors and appeals, in the last resort in all cases, at Trenton, on the third Tuesday of June, next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and, according to the law and custom of the State of New Jersey, ought to be done.

Witness, ABRAHAM O. ZABRISKIE, President Judge of our  
10 said Court of Errors and Appeals, at Trenton, aforesaid, the  
first day of May, in the year of our Lord one thousand eight  
hundred and seventy-two.

HENRY C. KELSEY, *Clerk.*

JOHN C. BESSON, *Attorney.*

## NEW JERSEY SUPREME COURT.

GEORGE W. BAILEY	}	
<i>vs.</i>		<i>In Case.</i>
THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN.		<i>On Postea.</i>

DIXON & COLLINS,  
*Attorneys.*

As yet of the twenty-eighth day of March, A. D. eighteen hundred and seventy-one.

Witness, MERCER BEASLEY,           10  
*Chief Justice.*

CHARLES P. SMITH, *Clerk.*

HUDSON COUNTY, *ss.*

The Mayor and Council of the city of Hoboken, the defendants in this suit, were summoned to answer unto George W. Bailey, the plaintiff therein, of a plea of trespass on the case; and thereupon the said plaintiff, by Dixon & Collins, his attorneys, complains:

For, that, whereas, on the nineteenth day of December, in the year of our Lord, eighteen hundred and sixty-four, the 20 President of the United States of America, by his proclamation, bearing date on that day, made, issued and published by him under and in pursuance of an act of Congress of the United States for that purpose theretofore made and provided did require and call for three hundred thousand men to serve in the military service of the government of the United

States for one, two and three years, and the said number of men so required and called for was, pursuant to the laws of the United States, apportioned among certain states and territories, districts and sub-districts, under which apportionment the three wards, comprising the city of Hoboken, in the county of Hudson, in the state of New Jersey, were required to furnish a certain number or quota, to wit: the number or quota of two hundred and forty-nine men, part and parcel of said whole number of three hundred thousand  
 10 men; and the said proclamation did further require, by virtue of the power and authority by law vested in the said President, that in case the quota, or any part thereof, of any town, township, ward of a city, precinct, or election district, or of any county not so sub-divided, should not be filled before the fifteenth day of February, in the year eighteen hundred and sixty-five, then a draft should be made to fill such quota; and the city of Hoboken, to wit: the three wards thereof aforesaid being liable to furnish said quota assigned and apportioned to the same, to wit: two hundred and  
 20 forty-nine men for said call failed to furnish and did not fill the said quota of men by the time last aforesaid, but made default in furnishing and filling the same in a large number, to wit: in the number of two hundred and twenty-four men, and thereby became liable to a draft to supply such deficiency; and thereupon, on the twentieth day of March, in the year eighteen hundred and sixty-five, the Mayor and Council of the city of Hoboken aforesaid, as an inducement to persons to volunteer in such military service on the behalf of the said city, as a part of said quota thereof, did adopt  
 30 and publish the following resolution, that is to say:

“*Resolved*, That a city scrip for the amount of three hundred and fifty dollars, in addition to the county bounty of four hundred dollars be issued to every drafted man or volunteer from this city, entering the service under the late call of the President of the United States for three hundred thousand men; *provided*, such drafted man or volunteer shall enter the military service of the United States, or furnish an acceptable substitute for one or more years, and shall be duly credited to the quota of this city under the  
 40 present call,” meaning the call above mentioned.

Whereupon, in consideration of and reliance upon the said promised bounty and scrip, the said plaintiff afterwards, to wit: on the day and year last aforesaid, at Hoboken aforesaid, offered himself and was accepted as such volunteer from said city of Hoboken, under said call and did then and there enter and was duly mustered into the said military service as such volunteer for one year as one of the quota allotted to the said wards of the said city of Hoboken, under the aforesaid call, by the proclamation aforesaid, and was then and there duly credited by the proper military author- 10  
ities of the United States to the quota aforesaid of the said city under said call; in consideration whereof, the said defendants then and there undertook, and promised to deliver to the said plaintiff the said scrip or obligation of the said city for the said sum of three hundred and fifty dollars, as provided for, and promised in and by the said resolution; yet the said defendants, though afterwards, to wit: on the day and year last aforesaid, requested by the said plaintiff to make and deliver to him their said scrip or obligation did then and there refuse so to do, and still do refuse, to the 20  
great damage of the plaintiff, to wit: to his damage of one thousand dollars.

And, whereas, also, the said defendants heretofore, to wit: on the first day of February, in the year of our Lord eighteen hundred and seventy-one, at Jersey City, in the county aforesaid, were indebted to the plaintiff in the sum of one thousand dollars, for the price and value of work done, and materials for the same, provided by the plaintiff for the defendants at their request; and in the sum of one thousand 30  
dollars for money paid by the plaintiff for the use of the defendants at their request; and in the sum of one thousand dollars for interest due from the defendants to the plaintiff, for the plaintiff having forborne moneys due from the defendant to the plaintiff, at the defendants' request, for a long time then elapsed; and in the sum of one thousand dollars for money found to be due from the defendants to the plaintiff on an account then and there stated between them; and the defendants afterwards, to wit: on the day and year last aforesaid, in the county aforesaid, in consideration of the premises respectively, promised to pay the said 40  
2

several last mentioned sums of money respectively to the plaintiff on request; yet the defendants have disregarded their promises, and have not paid any of the said moneys, or any part thereof, to the plaintiff's damage of one thousand dollars, and therefore he brings his suit, &c.

And the said defendants, by John C. Besson, their attorney, come and defend the wrong and injury, when &c., and say that they did not undertake or promise in manner and form, as the said plaintiff hath above thereof complained  
 10 against them, and of this they put themselves upon the country, and the said plaintiff doth the like.

Therefore let a jury thereupon come before the Chief Justice, or some other Justice of the Supreme Court of the state of New Jersey, at a circuit court to be holden at Jersey City in and for the county of Hudson aforesaid, on the third Tuesday in January, A. D. eighteen hundred and seventy-two by whom &c., and the same day is given to the parties aforesaid, there &c; and now, at this day, to wit: this  
 20 twenty-seventh day of February, A. D. eighteen hundred and seventy-two, before our said Supreme Court at Trenton, comes the plaintiff, by his attorneys aforesaid, and the said Justice before whom, &c., having sent hither his record, had before him, in these words, to wit: "Afterwards, to wit: at a circuit court holden at Jersey City in and for the county of Hudson, before Joseph D. Bedle, Esquire, one of the Justices of the Supreme Court, on the third Tuesday in January, A. D. eighteen hundred and seventy-two, according to the form of the statute in such case made and provided, come, as well the said plaintiff as the said defendant, by  
 30 their respective attorneys within mentioned, and the jurors of the jury between the parties aforesaid, in the place aforesaid, being summoned also come, who, to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their oath that the said defendants, the Mayor and Council of the city of Hoboken did undertake and promise in manner and form as the said plaintiff, George W. Bailey, has in his said declaration alleged, and they assess the damages of the said plaintiff, by reason of the non-

performance of the said promises and undertakings, over and above the costs and charges by him about his suit in that behalf expended, at the sum of five hundred and thirteen dollars and thirty-three cents, and for those costs and charges six cents."

Therefore it is considered that the said George W. Bailey do recover against the said "the Mayor and Council of the city of Hoboken," his said damages by the jurors aforesaid, in form aforesaid, found to five hundred and thirteen dollars and thirty-three cents, and also sixty-five dollars and fifty-<sup>10</sup> one cents for his costs and charges aforesaid by the court now here adjudged to the said George W. Bailey, and with his assent, and which said damages, costs, and charges in the whole amount to five hundred and seventy-eight dollars and eighty-four cents.

Judgment signed this twenty-seventh day of February, A. D. eighteen hundred and seventy-two.

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the judgment in the above stated cause as the same <sup>20</sup> remains of record in my office.

In testimony whereof, I have hereunto set my hand and the seal of the said court at Trenton this tenth day of June A. D. eighteen hundred and seventy-two.

CHARLES P. SMITH,  
*Clerk.*

## NEW JERSEY SUPREME COURT.

GEORGE W. BAILEY,

*vs.*THE MAYOR AND COUNCIL OF THE  
CITY OF HOBOKEN.*In Case.*DIXON & COLLINS, *Attorney of Plaintiff.*JOHN C. BESSON, *Attorney of Defendant.*

Be it remembered, That on the twenty-second day of  
 10 January, in the year of our Lord one thousand eight hun-  
 dred and seventy-two, at a supreme court circuit, holden at  
 Jersey City, in and for the County of Hudson, before his  
 Honor Joseph D. Bedle, Esq., one of the justices of the  
 supreme court of judicature of the State of New Jersey, the  
 issue joined in the above stated cause, between the said par-  
 ties (pro ut the pleadings), came on to be tried by a jury for  
 that purpose duly empanelled; and whereupon, the attorneys  
 of the said George W. Bailey, the plaintiff, to maintain the  
 said issue on his part, offered in evidence a certified copy of  
 the proclamation of the President of the United States, dated  
 20 December nineteenth, eighteen hundred and sixty-four,  
 certified March third, eighteen hundred and sixty-nine, by  
 William H. Seward, Secretary of State of the United States,  
 under the official seal of his department (*pro ut.*, the same).

Whereupon, the counsel on the part of the said defendants  
 interposed and insisted that the said evidence so offered to  
 be given by the said plaintiff, was not good or admissable in

law, upon the issue aforesaid, but his honor the said justice, held and affirmed that the said evidence so offered to be given by the said plaintiff, as aforesaid, was good and admissible in law; and whereupon, the same was read and given in evidence to the jury aforesaid, to which ruling of his honor the said justice, the defendants prayed a bill of exception, and his honor the said justice sealed the exceptions accordingly.

J. D. BEDLE, [L.S.]  
Justice, Supreme Court. 10

And thereupon, the said plaintiff further offered in evidence a copy of a resolution passed by the Council of the City of Hoboken, on the eighteenth day of March, eighteen hundred and sixty-five, and approved by the mayor of said city, on the twentieth day of March, A. D. eighteen hundred and sixty-five (*pro ut.*, the same), and admitted by the said defendants to be a true copy of said resolution.

Whereupon, the counsel on the part of said defendants, interposed and insisted that the said evidence so offered to be given, was not good or admissible in law, upon the issue 20 aforesaid, for the reason that the said "The Mayor and Council of the City of Hoboken" had no lawful authority to pass a resolution offering to pay bounty money for volunteering to serve in the army of the United States.

But his honor the said justice held and affirmed that the said evidence so offered to be given by the said plaintiff, as aforesaid, was good and admissible in law, and thereupon the same was read and given in evidence to the jury aforesaid, to which ruling of his honor the said justice, the defendants prayed a bill of exception, and his honor the said 30 justice sealed the exception accordingly.

J. D. BEDLE, [L.S.]  
Justice, Supreme Court.

And thereupon, the said plaintiff further offered in evidence, a certified transcript from the "Muster and Descriptive Roll of Volunteers," kept by the provost marshal of the Fifth Congressional District of New Jersey, (*pro ut.*, the

same), now in the custody of the war department, at Washington, D. C., certified by E. D. Townsend, adjutant general, whose signature is verified by William W. Belknap, secretary of war, under the seal of the war department, which certificate is dated May twenty-sixth, eighteen hundred and seventy, and the same was admitted in evidence accordingly.

And whereupon, the said plaintiff, to maintain the said issue on his part, called as a witness,

10 *Henry J. Mills*, who, being duly sworn, testified as follows:

*Q.* Where do you reside?

*A.* At Bloomfield, New Jersey, and do business in Newark; I am a lawyer.

*Q.* Were you in the United States service in the early part of the year 1865?

*A.* From April 9th, 1865, to November 16th, 1865.

*Q.* In what capacity?

*A.* Provost Marshal of this, the Fifth District of New  
20 Jersey.

*Q.* As Provost Marshal, you had charge of what?

*A.* Of the draft, sending drafted men to the front, receiving substitutes for drafted men, the enlistment of recruits, and also the enrolling of men subject to a draft in the different counties.

*Q.* Do you remember the proclamation of the President of the United States, in December, 1864, calling for three hundred thousand men?

*A.* Yes, sir.

30 *Q.* Had you charge of the enlistment under that call?

*A.* Yes, sir.

*Q.* What is that paper you have in your hand (paper shown to witness)?

*A.* This is a memorandum kept by me at my table, while I was Provost Marshal; it runs through a portion of January, from the time I was ordered to take the money of the recruits or substitutes, and forward it to the general rendezvous at Trenton; from that time until the end of the enlist-

ments ; it is a memorandum of every recruit and substitute taken in, and the amount paid to each of them.

*Q.* Can you inform us whether George W. Bailey was enlisted into the United States service on the 12th day of April, 1865 ?

*A.* He was enlisted.

*Q.* To what place was he credited ?

*A.* That I cannot state from any paper here ; to Hoboken, I presume ; that appears by the records of the office.

(Paper marked exhibit) shown to witness.

10

*Q.* What is that paper ?

*A.* A certificate that George W. Bailey was enlisted in the military service of the United States, from the Second Ward of Hoboken ; he was credited to the City of Hoboken ; that is my signature to that paper.

*Q.* When was this paper issued by you ?

*A.* Probably the same day ; they were generally signed at the time of the transaction, or not later than the next morning, at any rate.

*Q.* For what purpose was it given ?

20

*A.* For the purpose of having proof to the municipal authorities ; they produced those certificates to me, and I signed them.

*Q.* And such a certificate as this was signed in each case ?

*A.* Yes ; when a man put a substitute in, I gave him a certificate ; they were used in the transaction with the municipal authorities.

*Q.* Do you recollect who were engaged in the procuring of enlistments at that time, for the City of Hoboken ?

*A.* I cannot state them all ; there were several ; by looking at this paper here, I see several names, Hatfield, Richer, Buck, Smith, and Matthews, and Schenck, Wood, and others.

*Q.* How long after the 12th of April, did you continue the receiving of recruits—do you remember when recruiting was stopped ?

*A.* The last recruit was taken on the 13th ; I recruited on the 13th ; on going to my office on the morning of the

30

14th, I received a telegram ordering me to stop ; there were two recruits that had been taken the day before, who were not in a condition to be sworn in ; they were at the office the next morning ; those men, I refused to swear, and they were thrown out ; the order was to take no more recruits, and I did not take any after the 13th.

(The plaintiff's counsel proposed to offer the certificate signed by the witness.)

And upon being *cross-examined* by the counsel of the  
10 defendant, the said witness testified as follows :

Q. This certificate, you say, was signed the day it bears date ?

A. I do not know what date it is.

Q. April the 12th, 1865, is the only date I see upon it.

A. (The witness examines the paper). The date is upon the certificate signed by Hatfield ; my certificate has no date ; I presume I signed it that day, or the day after.

Q. To whom did you deliver it ?

A. I cannot recollect ; possibly to the one who paid the  
20 recruit.

Q. Do you know who paid him ?

A. The memorandum here is that Hatfield paid him ; that is my memorandum.

Q. What moneys did Hatfield pay him ?

A. He paid him (by my memorandum) \$400.00 ; \$350.00 was paid to him, the recruit, or retained by me for him, and forwarded to the rendezvous, and \$50.00 was paid to him, the recruit ; there was a certain discretion about that ; small sums were sometimes paid to the recruit and sometimes sent  
30 to their families, and the balance of the money was sent to the rendezvous at Trenton to be credited by the government to the recruit, and it was paid to him the first pay day in the field ; it was entered upon his muster roll—the amount that the recruit received ; that was carried forward, and when the first pay day came in the field it was paid to him ; I believe that was the rule.

Q. He did not receive his bounty at the time of the enlistment ?

A. Yes, he received it; the bounty was shown to him; after the men were examined, and their enlistment papers made out they were sworn in by me, and after that ceremony (there might have been five or twenty mustered in at the same time), I then made the inquiry "who pays these men?" I commenced with the first one, and the man who proposed to pay them brought his money, and the recruit was asked, "how much are you to receive?" and he stated, and the money was counted out in his sight, and if he wanted to count the money he did so, then the money was 10 retained by me.

Q. As the agent of the government?

A. Both, I presume.

Q. Did you claim the right to do that without the consent of the volunteer?

A. I did that by order of the government; the order took effect January 17, 1865.

Q. Have you a copy of that order?

A. No, sir.

Q. That order was to retain the bounty which the volunteer was to receive, and forward it to the rendezvous?

A. Yes, sir.

Q. Do you know whether Bailey ever got that money?

A. No, sir.

Q. Do you know what became of it?

A. No, sir.

Q. You say Hatfield paid it to you; did he draw it out of his own money?

A. I do not know.

Q. Was that certificate signed by Hatfield in your 30 presence?

A. No, sir, not that I am aware of.

Q. Was his name on it when it went out of your hands in that shape?

A. I should judge not, because these certificates were presented to the Board of Freeholders, and I presume he signed it as a member of the Board of Freeholders.

Q. Bailey was to have \$400, and that was paid by Hatfield?

A. Yes, sir.

*Q.* That was all the claim he had upon anybody for bounty?

*A.* That was the amount he agreed to go for, and that is the amount he received.

*Q.* He received it at the time of his enlistment, and it was paid you for him?

*A.* Yes, sir.

*Q.* You know of no other claim which he had upon anybody for any other money?

10 *A.* No, sir.

*Q.* By the Court. You speak of Bailey having enlisted, April 12th, 1865; state the character of that enlistment, how it was done?

*A.* The process of enlistment at that time was this: the agents, the men who were seeking to put in recruits, brought them to my office, in the United States Court Room, and handed to the janitor at the door the enlistment papers already made out—this refers simply to enlisted men, not to substitutes—the papers for the substitutes were made out by  
 20 my clerk; the papers for the enlisted men were made out by agents and others whom they chose to employ, and they were handed to the janitor who stood at the door of the room with a list of his recruits which he sought to present, then they were admitted into the court room and these papers received by the janitor were handed to another book-keeper who stood at the door of the commissioners' room—Commissioner Quaife; a regular order was observed in their being called in; they were taken into the commissioners' room, who examined as to their age, nationality, resi-  
 30 dence, and their liability to draft where they lived, and they were weighed, and their description, as it is called, which was carried out upon their muster roll, made out; they were taken to the surgeon's room, and examined physically; if they were passed as proper recruits, new papers, if they had not been made out, were made out; then they were put together in a room until a sufficient number of them to make it convenient were mustered in; the papers were examined by a clerk at my table to see that they were correct, and if so, then they were mustered in in squads of from five to  
 40 twenty-five; the mustering in consisted of swearing in; then

the men were paid as I stated before ; if there was any dispute about the money to be paid, it was settled there generally, and the men satisfied, and then they were sent to the rendezvous under the charge of a battalion of the invalid corps ; the rendezvous was at Newark ; the amount of money each one was to receive was read over to them the next morning by my head clerk, and the men were again asked if they were satisfied ; if there was any dispute exceeding ten dollars it was looked into ; but if it was ten dollars or less it was not taken into account, because I 10 thought it was too small a matter to spend time over.

*Q.* How was the crediting done ?

*A.* The mode of crediting was done by making an entry upon the books ; we had muster rolls in our office ; these were sent to Trenton, and then to Washington ; the credits were put upon the roll ; the men were forwarded to Trenton, and that is the last I saw of them.

*Q.* You said Bailey made no objection to the amount of money he received ?

*A.* Not that I recollect of ; my orders were to forward 20 all the money which the recruit received, to Trenton ; but I used a certain discretion about that ; a man might want some spending money, or want to send it to his family, and, sometimes, where I knew the person, I would let him have most all the money ; but where I did not know the man, I seldom exceeded \$50.00.

*Q.* What was the object of your retaining that money ?

*A.* My object was to secure the recruit against desertion.

*Q.* When was he paid that money ?

*A.* I believe the rule was the first day in the field. 30

*Q.* Did Bailey consent to your retaining his money in your hands ?

*A.* Yes, sir ; that is, I know of no objection to it.

And the said witness being *re-examined in chief*, testified as follows :

*Q.* In the commissioners' room, the men were examined as to the place whence they came ; were all the credits given in accordance with their answers ? For instance, if

a man said he came from a certain town, was he credited to that place?

A. Not necessarily; a man could have himself credited in any town he chose, if he was not liable to draft in his own town; the rule was this, a man was inquired of as to his liability to draft, where he came from; for instance, one morning, a squad of eight or ten men came from Morris county, and wanted to enlist; the draft was going on in Morris county, and they were refused, and the men were  
10 retained in the office, and in the next train that came down, was an officer for these men, as they were drafted. Pains were taken to inquire of a man, whether he was subject to a draft in his own district; if he said he was not, and we had every reason to believe he was not, he was then taken.

Q. If the examination of the recruit, under the circumstances, satisfied you that the man was liable to draft in a particular place, was he credited to any other place?

A. No, sir; he was not taken.

Q. Do you recollect whether at the time the money was  
20 paid over to the men, they endorsed these receipts or not?

A. I do not recollect anything about that.

And the said witness being *re-cross-examined*, testified as follows:

Q. Do you know where Bailey's residence was?

A. No, sir.

Q. Did he give in any residence?

A. My papers don't show that; I presume he did; that is a matter of record.

Q. What papers would show his residence?

30 A. The only record on his muster roll, would be the place of his birth; I am not sure; but the surgeon's book would show it; I have records that show it.

Q. And you have no recollection of his stating where his residence was?

A. No, sir.

And thereupon the plaintiff's counsel offered in evidence the certificate signed by H. J. Mills, marked Exhibit, (*pro ut.*, the same.

Whereupon the counsel, on the part of the defendants, interposed and insisted that the said evidence (exhibit) so offered to be given by the said plaintiff was not good or admissible in law upon the issue aforesaid; but his honor, said justice, held and affirmed that the said evidence so offered to be given by the said plaintiff as aforesaid was good and admissible in law, and thereupon the same was read and given in evidence to the jury aforesaid, to which ruling of his honor the said justice the defendants prayed a bill of exception, and his honor the said justice sealed the exception accordingly; and thereupon the said plaintiff further to prove and maintain the said issue on his part, called as a witness,

*Stephen Quaiife*, who being duly sworn, testified as follows:

*Q.* Where do you live?

*A.* At Jersey City.

*Q.* Were you engaged in the recruiting business in the early part of the year 1865?

*A.* I was commissioner of the board of enrollment for the fifth district of New Jersey, stationed at Newark. 20

*Q.* What was your duty as commissioner in the enlistment of volunteers?

*A.* I usually examined the volunteers or substitutes before they were sent into the surgeon, to see whether they were competent to be sent to the surgeon.

*Q.* In what did your examination consist?

*A.* To find out where they were from, whether they were liable to draft in any place, their residence, their occupation, age, and find out what they came for. 30

*Q.* To whom did you report the facts?

*A.* After I had examined in regard to those things, if they were thought fit subjects to go before the doctor, I stripped them, took their height and weight, and general description, and put it on a slip of paper, sent it into the doctor's room with them, and from there they were sent to the provost marshal.

*Q.* Do you recollect whether enlistments were made and

credited to the city of Hoboken in the month of April, in that year?

A. I think they were credited all over in that year.

Q. Do you recollect who was engaged in procuring those recruits for Hoboken?

A. I think Hoboken had a committee there; Chamberlain was one and McDermott was one; I think they had two.

Q. Do you recollect whether Hatfield was there?

A. Yes, I think he was, and Mr. Board was there.

10 Q. Have you any distinct recollection of the individuals who were enlisted?

A. No, sir.

Q. The credits that were made to special localities, were made how; in accordance with their residence, or liability to draft, or how was it?

A. If they came from the Second Ward of Hoboken, they were credited to the Second Ward of Hoboken; if they came from other places, and were not liable to draft, were exempt from draft, then they were credited to where they chose to  
20 be, or where the committee chose to credit them; if they were liable to draft in any other district except the Fifth, they were refused—not received.

Q. Did you always examine the men in reference to their liability to draft?

A. Yes; where I had reason to doubt them, I have sworn them.

Q. Was every recruit that was enlisted, passed through examination by yourself?

A. I believe they were, that is, in the Fifth District, after  
30 the draft commenced.

Q. Do you know anything about the men's endorsing the certificates that the provost marshal issued?

A. I believe that was the common practice; I have seen a number of them endorsed.

Q. At the time of the payment?

A. At the time of the payment.

Q. (Certificate shown to witness) is that endorsed?

A. Yes, sir.

And the said witness being *cross-examined* by counsel of defendants, testified as follows :

Q. How was it endorsed ?

A. Endorsed "George W. Bailey."

Q. Do you know his handwriting ?

A. No, sir.

Q. Did you see him write that ?

A. No, sir.

Q. You do not know whether it is his handwriting or not ?

A. I do not.

10

Q. What was the object of endorsing the certificate ?

A. The different town committees from the board of freeholders, or from the different townships that were paying a bounty, wanted something to show that such a man had been enlisted, and they fetched these certificates ; and after a man was mustered in, the provost marshal would give the certificate, also with the endorsement of the man upon it, so that they could show to the freeholders, that the man was credited to such a place.

Q. Was there any evidence taken as to the genuineness of those endorsements, in any case ; any witness required to certify to the genuineness of the endorsement ?

A. No, sir ; if the parties themselves were satisfied, the board of enrollment had nothing to do with it.

Q. Do you remember anything about this Bailey ?

A. No, sir.

And thereupon the said plaintiff called as a witness, *James T. Hatfield*, who being duly sworn, testified as follows :

Q. Where do you live ?

30

A. At Hoboken.

Q. Were you engaged in procuring volunteers for Hoboken to enter the service of the United States in April, 1865 ?

A. Yes, sir ; to some extent I was.

Q. Just look at that certificate of Mills, (Exhibit) and see whether you can tell us anything in regard to that as to the enlistment of George W. Bailey, and as to whether you paid him any money, and as to who endorsed the receipt ?

A. The money was not paid to Bailey ; I paid the money to Captain Mills in Bailey's presence, and after Mills had asked Bailey if he was satisfied with the amount, and on receiving an affirmative answer I paid Mills, and subsequently Bailey endorsed his name upon the back of it, showing that he had received the money, or equivalent for the money.

Q. Mills asked him if he was satisfied ?

A. Yes, sir.

10 Q. The money was paid Mills for what purpose ?

A. For the purpose of giving it to Bailey, as understood

Q. That endorsement upon the back was made by Bailey ?

A. Yes, sir.

Q. The money was paid by you ; how came you to have him enlisted and credited to Hoboken ; how came you to pay the money to procure his enlistment ?

A. I became interested in it at the request of some of our citizens in Hoboken, amongst others, drafted men ; the  
20 proposition was made to me that I should assist in filling the quota.

Q. Were any officers of the city of Hoboken there at the time of his enlistment ?

A. Yes sir ; I saw Chamberlain there ; I saw Reed there, he was president of the council ; Chamberlain was chairman or acting chairman of the bounty committee.

Q. Who were you acting for, and in what capacity ?

A. I was simply, as it were, purchasing certificates of the enlistments of these men, to aid in filling the quota of  
30 Hoboken, paying cash, and procuring the certificates of the Provost Marshal, so that I might re-imburse myself by county and city bonds ; at the same time every man that I paid went to the credit of Hoboken.

Q. Did you know at the time of this resolution of the Common Council ?

A. Yes, sir.

Q. Thees certificates entitling the enlisted person to scrip, were they valued at par generally ?

A. No, sir.

Scrip not at par

Q. Was the city paying money, or was it only issuing scrip?

A. Issuing scrip.

Q. Was Bailey willing to go for the scrip.

(Objected to, as leading.)

Q. Upon the enlistment of Bailey, did you receive that certificate?

A. Yes, sir.

Q. Did you afterward make any demand upon the common council for the issuing of the scrip?

10

A. Yes, sir.

Q. By the Court. Did you bargain with this recruit?

A. No, sir.

Q. Who bargained with him?

A. Some man who was engaged in filling the quota of Hoboken, enlisting men.

Q. By the Court. State the exact relation of yourself to the transaction; to whom did you give that certificate?

A. I had to surrender it to the treasurer in order to get the bonds.

20

Q. That certificate is yours?

A. Yes, sir; on the day of the enlistment of Bailey I was present in the provost marshal's office prepared to pay the money that this recruit had agreed to accept to be enlisted as a volunteer, and Mills asked him the amount he was entitled to receive, and he stated it, and I then and there paid the money to Mills, and upon that payment Mills signed the certificate, and the recruit endorsed his name upon the back of it.

Q. What was the arrangement between you and the recruit, as to your getting the benefit of the scrip under any such arrangement?

A. The arrangement was all made through these men who put in these recruits to the credit of Hoboken; I had no personal interview with the recruit myself; my object was to get the quota filled, and to get the scrip at a price that I should not be at a loss by it.

Q. Can you recollect when you made the demand?

*Answer  
given to  
Bailey*

A. I don't, it was so long ago.

(Book admitted to be the minutes of the council of the city of Hoboken shown to witness, and his attention called to an entry therein, dated May 31st, 1865.)

Q. Can you say when you demanded the scrip ?

A. It appears from the minutes, 31st of May, 1865.

Q. Does that demand include the issuing of scrip for this certificate ?

A. Yes, sir.

10 Plaintiff's counsel offer in evidence the minutes of the council, dated May 31st, 1865, page 666, (*pro ut.*, the same).

Q. Have you ever received the scrip ?

A. No, sir, not the city scrip.

Q. Has it ever been issued to any body that you know of ?

A. No, sir, not to my knowledge.

Plaintiff's counsel offered in evidence the minutes of the council of the city of Hoboken, of May 31st, 1865 ; also, minutes of June, 1865, (*pro ut.*, the same.)

And the said witness being *cross-examined* by counsel of  
20 the defendants, testified as follows :

Q. At whose request did you go to Newark to look after these volunteers, and advance the money ?

A. At no one's request.

Q. How came you to go ?

A. It was from the desire, principally, to assist in filling the quota.

Q. You were a member of the board of chosen free-holders, at that time ?

A. Yes, sir.

30 Q. Were you on a committee of that board to look after volunteers ?

A. No, sir.

Q. Whose money was it you advanced to the volunteers ?

A. My own.

Q. Did you take any assignment of the claims against the city or county, of any of the volunteers?

A. Nothing further than the certificate, with the endorsement of the volunteer upon it.

Q. Did you see Bailey at Newark?

A. Yes, sir.

Q. Did you see him sign his name upon the back of this certificate?

A. Yes, sir.

Q. And you paid Mills the money in his presence? 10

A. Yes, sir; for him.

Q. What amount did you pay to Mills?

A. I presume Mills is correct; I find a check which I gave to Mills, which would make a payment to that man, of \$500.

Q. What is your recollection about the amount of money you paid him?

A. I could not tell the exact amount that I did pay.

Q. How much did you get from the county?

A. I got a bond of \$400. 20

Q. Did you pay more than \$400?

A. I could not say.

Q. (By the Court.) This certificate dated April 12th, is that your handwriting; is it filled up by you?

A. Yes, sir.

Q. The certificate of Mills has no date; what is the date of it?

A. Bailey was put in on the 12th; consequently, I must have received the certificate the same day, and filled up the certificate, as a freeholder, to entitle me to the county 30 bounty.

Q. And the board of freeholders paid you \$400 on this certificate, that you had advanced him?

A. Yes, sir, as a member of the board of freeholders.

Q. Did you authorize the institution of this suit?

A. Yes, sir.

Q. Had you authority from Bailey, to commence the suit?

A. I do not know where Bailey is.

Q. Do you know whether he is living or dead?

A. I do not. 40

*no  
Assign*

*County*

*Hulpe  
Authorize  
suit*

Q. How long since you heard from him ?

A. I could not tell you.

Q. Have you heard from him since the day he enlisted in 1865 ?

A. I think not.

Q. Did you ever hear him say that he ever had any claim against the city of Hoboken ?

A. No, sir.

Q. Did he ever authorize you, in any way, to commence  
10 suit against the city of Hoboken ?

A. No, sir.

And being *re-examined in chief*, the said witness testified as follows :

Q. That check for \$500, is that an individual check ?

A. Yes, sir ; it is a check of \$3,000, including Bailey.

Q. Do you recollect whether the whole of that went to Mills for the recruits, or whether some portion of it did not go to some one else who had procured enlistments for you ?

A. I think that is the way of it ; I think the commission  
20 of the man who put them in made the whole amount to \$500.

And being again *cross-examined*, the said witness testified as follows :

Q. That \$500 paid the recruit includes what the recruit got, and what the broker got ?

A. Yes, sir.

Q. Do you know how long Bailey enlisted for ?

A. No, sir.

Q. Do you know whether he was mustered into the ser-  
30 vice or not ?

A. I do not know of my own knowledge.

Q. Do you know whether he was called into the service, or whether he was discharged.

A. I do not.

*Henry J. Mills*, a witness for the plaintiff, being recalled, testified as follows :

Q. Was the quota of the city of Hoboken filled under this call for three hundred thousand men ?

A. I think not.

The counsel for plaintiff offered in evidence the endorsement on the back of the certificate of H. J. Mills, already in evidence, whereupon the plaintiff rested his case.

Which being done, the counsel for the defendants moved that the plaintiff be called.

And whereupon the counsel for the plaintiff moved the court for leave to call and examine Charles Chamberlain as a witness, who had been subpoenaed, but was not in court when the plaintiff rested his cause, which motion being 10 granted by the court, the plaintiff called as a witness

*Charles Chamberlain*, who being duly sworn, testified as follows :

Q. Where do you live ?

A. At Hoboken.

Q. In the early part of the year 1865 were you an officer of the city government of Hoboken ?

A. In 1864 and 1865 I was councilman of the first ward of the city of Hoboken.

Q. Had you anything to do with the procuring of volun- 20 teers for the city ?

A. Yes ; under the last call, I was on that committee ; that is, the call of December, 1864.

Q. Did you attend Newark, in reference to the business of enlistment of volunteers for the city ?

A. I did, on several occasions.

Q. Had you any interviews with General Hatfield or any other person acting in conjunction with you, in regard to procuring volunteers for the City of Hoboken ?

(Counsel for the defendants objected to the question, upon 30 the ground that it did not appear that the witness had any authority from the committee to act in their behalf in the matter.)

His honor the said justice ruled that the authority of the witness to act in the matter, should be shown.

Q. Who constituted that committee ?

A. McDermott, myself and Brunges ; we were appointed by the council as a special committee on volunteer bounties, by a resolution, for the purpose of seeing to the filling of the quota.

The minutes of the council of February 20th, February 23rd, February 27th, February 28th, March 18th, and March 30th, 1865, were offered and read in evidence. (*Pro ut.*, the same.)

10 Q. Were any other gentlemen at Newark, attending to this matter on behalf of the city, besides yourself ?

A. I don't remember meeting any other members of the committee at that time, except Councilman Reed, on one or two occasions.

Q. Had you been requested by the committee, or any of the members of it, to go to Newark, to attend to these matters ?

A. I was so requested.

Q. Go on and state what was said ?

20 A. I was requested by Councilman McDermott, to take his place as chairman of the committee, after, I think, a visit that he made to Newark ; I accepted the chairmanship of the committee, and so acted until the closing of the draft.

Q. Give the names of the committee ?

A. I was mistaken when I said only I and McDermott, and Brunges, were the committee, for Whele was on that committee ; both of these gentlemen urged that their time would not allow them to go to Newark, and urged me to act for them, and with their consent, that is, Brunges and

30 Whele.

Q. State what you did ?

A. I had occasion to see the provost marshal, and he called my attention, on one or two occasions, to the fact that we were behind with our quota, and that it was necessary that we should proceed with dispatch to fill it ; I told him we only needed a few days time, to give the municipal authorities time to put the resolution in a different shape ; what I did at Newark, was simply to say to the gentlemen

who were putting in men, to answer a question like this, "Are you paying so and so for men?" "Yes." "Can we put in men under the resolution?" My answer was, "Yes, we are still open." I said it to Hatfield, Idell and others.

Q. Were you there while men were being enlisted?

A. Yes.

Q. While they were being credited to Hoboken?

A. I was.

Q. Did you keep yourself informed in reference to the credits? 10

A. I did up to the last day, that was Thursday, the 13th day of April, 1865, I think.

Q. Were you at Newark on the 12th?

A. Yes, sir.

Q. Do you know whether the quota was filled or not?

A. It was not filled on Wednesday afternoon, when I left.

Q. Do you recollect how many it lacked?

A. I have an indistinct recollection of its being somewhere very near one hundred short at that time; it had only received a credit of ten on the Riley and Allen contract; there was about two hundred and forty men to be put in altogether. 20

Q. Did you tell Hatfield how much the city was paying?

A. Yes; the question was asked if we were paying \$350 in scrip, and I said yes, the resolution is open.

Q. Do you know whether any scrip was issued by the city under the resolution of March 20th, prior to the 12th of April?

A. There were ten city bonds issued on Thursday, April 13th, for \$3,500; these men must have been put in on Wednesday. 30

Q. When you speak about the quota being about one hundred short, what do you mean?

A. I mean, when I left on Wednesday that the quota lacked very nearly one hundred, that was on the 12th.

Q. When you left on the 12th, was it during the time of the enlistment or afterwards?

A. It was about mid-afternoon; I find a memorandum appertaining to the whole matter, in which I notified the 40

mayor that the price of men appeared to be falling, and that it would be necessary for us to reduce our offer of bounty, as we could fill our quota cheaper; he thought the regular meeting, which would come on Thursday evening, would be time enough, and at that regular meeting of Thursday evening, the 13th of April, it was reduced to \$150.

Q. Do you know whether Hatfield knew that you were councilman of the city of Hoboken?

A. Yes, he was fully informed of the position; I was  
10 compelled to take a prominent part; he knew I was on the bounty committee.

Q. What time was your council held?

A. In the evening, at eight o'clock.

Q. What hour of the day was enlisting closed at Newark?

A. If I am not mistaken, previous to four o'clock in the afternoon.

And the said witness being *cross examined* by the counsel for the defendants, testified as follows:

Q. What arrangement did you make with Hatfield about  
20 putting in men for Hoboken?

A. No other arrangement than was covered in the former resolution of the council.

Q. Did you make any arrangement with him.

A. Only that I would endeavor to have his scrip drawn at the earliest possible moment, as fast as the certificates of the Provost Marshal were brought in.

Q. Was Hatfield putting in men himself?

A. I so understood it.

Q. How did you understand it?

A. By his application to me.

Q. What was his application to you?

A. Whether he could put in men under the \$350 resolution.

Q. Whether if he put men in under that resolution the city would pay him?

A. Yes, sir.

Q. And you told him it would?

A. Yes, sir.

Q. Did you understand that he put any men in under that resolution ?

A. I understood so from himself and from others.

Q. Do you know whom he put in ?

A. No, sir.

Q. Do you know anything about Bailey ?

A. Not individually.

Q. Do you know who procured him to go in ?

A. No, sir.

Q. Do you know what was agreed to be paid him for 10 going in ?

A. No, sir.

Q. Was Hatfield doing anything more than advancing money for those who put in men ?

A. I cannot say.

Q. You had no written agreement with any body to furnish men ?

A. Not after the Riley contract was broken.

Q. Do you know where Bailey came from ?

A. No. 20

Q. Where he lived ?

A. No.

Q. Do you know anything about him since ?

A. Nothing more than that he was put in as a volunteer.

Q. Did you ever see or hear anything from him after he left ?

A. No, sir.

Q. Didn't you know on the 13th that Gen. Lee had surrendered his army ? 30

A. No, sir.

Q. When did you first hear of that ?

A. I could not tell.

Q. Had not you heard of the capture of Richmond ?

A. No, sir ; I asked the Provost Marshal when I left on Wednesday whether the draft would stop ; he said he had no information of it.

Q. What was the cause of the price of volunteers falling so rapidly at that time ?

A. The three year men were clamorous for bounty and 40

wanted to re-enlist again ; the three years men whose time ran out.

*Q.* Can you tell who it was who claimed the right to collect from the city ; who were putting in men on the 12th or 13th of April ?

*A.* Any man who put them in was entitled to receive the scrip from the city.

*Q.* Who claimed for Bailey ?

*A.* I do not know.

10 *Q.* If Hatfield put him in he would be entitled to the scrip ?

*A.* Yes, sir.

*Q.* And if another man put him in he would be entitled to the scrip under your arrangement ?

*A.* Yes.

*Q.* Did you put any men in ?

*A.* No, Sir.

*Q.* Did you advance money to pay bounties for any, while you were acting as committee ?

20 *A.* No, Sir ; I bought scrip afterwards ; I bought city and county scrip, both.

*Q.* Did you buy any of these certificates ?

*A.* No, sir.

*Q.* Did you report to the council as chairman of the committee the number of men you put in, and what you agreed to pay for them ?

*A.* I reported verbally, from time to time, what was transpiring ; I do not remember of ever making a formal report.

30 *Q.* Did you furnish the council with the names of the parties who were entitled to scrip ?

*A.* I presume I did ; the chairman being away, I signed most of the scrip certificates.

*Q.* What do you mean by the scrip certificates ?

*A.* The promise to pay \$350.

*Q.* You advanced these certificates to the parties who put in the recruits ?

*A.* Yes.

40 *Q.* You did not report to the council the names of the parties who were entitled to the scrip under that resolution ?

A. I could not answer that without referring to the committee reports.

And whereupon the counsel for the said plaintiff moved the court for leave to examine witnesses further in reference to the transfer of the said claim, which motion was granted by his honor the said justice.

And thereupon the said plaintiff recalled as a witness the said *James T. Hatfield*, who testified as follows :

Q. You may state upon what understanding you paid this money for the recruit to Captain Mills; what was the arrangement under which you paid this money ? 10

A. The understanding was that I was to receive the certificate of Mills with the endorsement of the volunteer; the certificate would entitle me to the county bounty and the city bounty, to the whole of it.

Q. Was the recruit to receive anything except the money that was paid by you ?

A. Not that I know of; no, sir.

And the said witness being *cross-examined* by counsel for the defendant, testified as follows :

Q. With whom did you make that arrangement ? 20

A. With the man enlisting the recruit.

Q. Who was he ?

A. I could not give him name, but I understood the man is dead that put in these recruits for Hoboken.

Q. What position did he hold in the city government ?

A. He did not hold any position in the city government.

Q. Was he a mere broker ?

A. A broker, I suppose; yes, sir.

Q. Did you know him ? 30

A. Yes, sir.

Q. Did he live in Hoboken ?

A. I believe he did.

Q. What was his name ?

A. I have forgotten.

Q. Where were you when you made that arrangement with him ?

with the  
arrangement  
was made

A. In Newark, I believe.

Q. When was it made?

A. Perhaps, a week or ten days before the 12th.

Q. Did you agree upon any amount that you were to advance?

A. I was not to advance more than \$600 for each recruit; that was considered about the market value of the city and county bonds.

Q. You had no written agreement?

10 A. No, sir.

Q. Did you pay the broker anything?

A. I did not myself.

Q. (By the Court.) Let us know the whole of it?

A. I was applied by a number of gentlemen—some brokers and some of the citizens of Hoboken—to assist in filling the quota of Hoboken, and to advance money for the purpose of paying these bounties; I concluded to do so, provided the city and county scrip would not cost to exceed \$600, and this broker, with whom I finally made the arrangement to put in these volunteers, he was to send me word when he had any men that were ready to be enlisted; on the 12th of April, I received word that he had six or seven men that were ready to be enlisted for Hoboken, if I would come up and pay them their money; I drew a check of \$3,000; I went there, and these men were presented in the presence of Captain Mills; they were accepted by Mills, and asked if the amount that they were to receive was satisfactory to them, and they said “yes;” and I handed Mills my check for \$3,000, to pay for these six men, 20 Bailey amongst the number, and received Mills’ certificate; these men expressed themselves satisfied, and signed these certificates on the back, transferring these certificates to me; I remember paying the broker \$25 for each man, for his services for enlisting these men for Hoboken, in addition to the money I had paid to the men themselves.

30

Q. What did the city council have to do with that arrangement?

A. Nothing further than I was to hold them under the resolution that was passed.

*Q.* Did you have any understanding with the city council or their committee?

*Q.* I did with Mr. Chamberlain; Mr. Chamberlain on the 12th was at Newark; some questions were said in reference to these men not being from Hoboken; I asked Chamberlain, as one of the councilmen, whether he thought that question would be likely to be a serious one; he said he thought not; whether he thought the city would be responsible if the men were put in, and he said "yes;" I asked him if he thought it was advisable for me to go on and put these men in, and he said "yes, go on," and I thought as he was councilman and chairman of the committee, I would go on; I think Reed raised the question as to these men not being residents of Hoboken; I think that was on the 13th that he raised that question, and then I think this conversation took place between Chamberlain and myself. 10

*Q.* What was said between you and Reed about their not being citizens of Hoboken?

*A.* I think I had no conversation with Reed myself; I stood by and heard the conversation with Reed and other parties. 20

*Q.* To whom did you advance this money?

*A.* To the volunteers.

*Q.* Under your arrangement with this broker who is dead?

*A.* Yes, sir.

*Q.* Did you ever know the broker's name?

*A.* I did at one time.

*Q.* Had he any contract with the city for putting in men? 30

*A.* I do not know that he had.

*Q.* Do you know what his contract was with the men he put in, how much he was to pay them?

*A.* No, sir.

*Q.* Do you know whether he did pay them anything, except what you gave them?

*A.* I don't.

*Q.* At the time you paid the money, and Bailey signed his name on the back of this certificate, what conversation passed between you and Bailey? 40

A. I think the conversation was between the Provost Marshal and the clerks.

Q. Was there any conversation between you and Bailey about advancing the money, and your taking the certificate?

A. No, sir ; I do not recollect any ; there may have been, but I do not remember.

Q. If there had been, would you have not recollected it ?

A. I do not know of anything to impress it upon my mind.

10 Q. Did you take any other certificate from the Provost Marshal or Bailey than the one produced here ?

A. No, sir.

Q. That certificate says nothing about city bounty ?

A. I believe not.

Q. What evidence did you take that you were entitled to Bailey's claim for city bounty ?

A. The broker or agent that was enlisting the men made that arrangement with me.

20 Q. Do you know what the understanding between the broker and Bailey was ?

A. No.

Q. Did you learn from Bailey in any way that he had relinquished to you his claim on the city of Hoboken for bounty ?

A. I do not remember.

Q. Do you know whether Bailey knew of the existence of that resolution or not ?

A. No doubt of it.

30 Q. Did he know that the city council had passed such a resolution ?

A. I think he did ; he knew what he was entitled to by enlisting to the credit of Hoboken, no doubt.

Q. What evidence have you that he knew of the existence of that resolution when he agreed to enlist ?

A. I have from the broker, his agent.

Q. Do you know the broker was his agent ?

A. I presume he was from the fact of his enlisting him ; he was present at the time of the enlistment.

40 Q. But you do not know what the arrangement between him and the broker was ?

A. Only from what the broker told me.

Q. The \$500 which you paid was all that he received, and he expressed himself satisfied with that?

A. Yes, sir.

Q. Did you understand that that was all he was to receive for being enlisted?

A. I presume so.

Q. You do not know whether he expected more or not?

A. No.

Q. Did not he, in addition to the \$500 which you paid, 10 expect to get this scrip himself?

A. Certainly not.

Q. Why not?

A. From the fact that he could not expect to receive \$500 in cash and the county and city bonds besides.

Q. Why not?

A. I suppose it is not reasonable to suppose so.

Q. Was not this the way of putting in these men: the brokers to make the agreement with them to pay them so much bounty if they would enlist, and the brokers to dispose 20 of them as they saw fit?

A. I do not know what the custom was.

Q. Don't you know that no man could get himself enlisted without the aid of a broker?

A. No, sir, I do not know that.

Q. Did you ever refuse any certificate for the county bounty for any who were not residents of Hoboken?

A. No, not upon that ground.

(Last question and answer overruled by the Court.)

Q. Were you on the committee of the board of chosen 30 freeholders to procure and pay these bounties?

A. My impression is that there was no committee appointed; each freeholder was to sign for his separate township where he lived; each freeholder was a committee for his own township.

Q. And in that capacity you acted in this case?

A. Yes, sir.

*Q.* State what conversation you had with the broker, to procure the enlistment of these men ?

(Question objected to by plaintiff's counsel ; the court overruled the objection, and allowed the plaintiff an exception.)

*A.* The proposition from me was that he would procure these men for the City of Hoboken, provided I would advance the money and take the certificates, so that I could get the scrip of the county and city, and that the certificate  
 10 entitling me to this scrip should not exceed \$600 ; that is the amount I should advance ; whenever he could get men to enlist for that amount, or less, I was prepared to advance the money for the recruits, and take certificates ; on the 12th he sent me word, and he produced these men, and amongst them was Bailey, and he stated in their presence that they were to receive so much money to be enlisted to the credit of Hoboken ; they were produced to Mills, and I paid him—Mills—the money, Mills giving me the certificates ; the understanding was these men were satisfied with the amount  
 20 they received, and endorsed the certificates over to me.

What was the understanding between you and the recruit at the time they endorsed the certificate as to the effect of the endorsement ?

*A.* That was to be my property ; I was to have the certificate as my own property.

And thereupon the plaintiff recalled as a witness

*Henry J. Mills*, who testified as follows :

*Q.* State what you know in regard to the understanding between the recruits and the gentlemen furnishing the  
 30 money to pay them, in regard to whether they were to receive any scrip in addition to the money they got, or whether the money was in full ?

*A.* During the enlistment and filling of the quotas under this draft a number of persons who had money advanced them, as is related by Hatfield ; the recruit was paid the amount for which he had agreed to go generally, and the

persons enlisting him or paying him this money took the ticket or receipt or certificate from him, similar to this one, upon which I suppose he procured the scrip from the county, city, or township to which the man was credited; it was understood that that gave him a title; these men were furnished generally by runners; the great majority of them were foreigners, I suppose; these runners would agree to furnish these men for a certain price, \$500 or \$600; then they would make a further bargain with the man how much he was to receive, as in this case \$500 was paid to the 10 broker and \$400 to the recruit; then the person enlisting him took the scrip, and collected whatever it was worth or answered for from the county or township, and there was an order from the government instructing me to receive nothing but money for the recruit, except in cases where I was perfectly well satisfied of the honesty and integrity of the recruit, so that in looking over that list of mine you will see comparatively few recruits received scrip, and they were known to me, possibly persons from Newark, or persons 20 vouched for by persons I knew, I was allowed in that case to pay them over the scrip; the order of the government of the United States that the money should be put into my hands and forwarded to the rendezvous, was to secure the services of the recruit up to a certain period in the field; that was very carefully guarded; I recollect in one instance I allowed a person enlisting from one of these sub-districts on the hill here to get the scrip; that fellow ran away the next day, and in giving the recruit the scrip it gave him precisely the same facilities to desert as taking the money in his own hands would, and he could desert with the money in 30 his hands.

*Q.* The money received by the recruit was in full of these compensations?

*A.* Yes; this Bailey enlisted for two years, and would be entitled to the bounty corresponding for that; Hatfield states that he paid a recruit \$500; all the money that ever came into my hands was the amount actually paid to the recruit; I received no checks from anybody; the General is mistaken about that; General Hatfield states he paid me

a check of \$3000; he is mistaken about that; I took the exact sum which was paid the recruit whatever that was.

And the said witness being *cross-examined* by counsel for the defendant testified as follows:

Q. You don't know whether these men ever went into the field or not?

A. I know they went to Trenton.

Q. Were they discharged when they got to Trenton?

A. I could not say about that; I got a dispatch on the  
10 14th.

Q. Don't you know that these men were disbanded at once, never went into the field, on the arrival of that dispatch?

A. I do not know that fact; I think it is very likely they were.

And thereupon the plaintiff called as a witness

*Louis Ostendorf*, who being duly sworn testified as follows:

Q. Where do you live?

20 A. At Hoboken.

Q. Were you in the service of the government at the time of these enlistments in 1865?

A. I was Deputy Provost Marshal under Mills.

Q. What branch of the establishment had you charge of?

A. None of the enlistments, except the general supervision of the outside.

Q. State what you had to do in reference to the enlistment of Bailey and these other persons enlisted and credited to Hoboken?

30 A. I was simply in the rear of the captain seeing all the transactions; my proper business was to look out to the drafted men.

Q. State what transpired in reference to this Bailey and the other individuals; what was the course in relation to this service?

A. The men would be brought there by brokers; then the broker would go to some man that had money, and arrange

with him to pay these men, and take a certificate for it, and on that certificate they would draw the county and city scrip.

Q. How would the recruit be paid?

A. The money would be given to the Captain, and the money sent next morning to Trenton.

Q. Any questions put to the recruit?

A. Yes; "How much are you to get?" if there was any dispute the Captain would settle it, and make the broker very often pay him more money; if any money was to go 10 to any of the recruits' families it was sent to them.

Q. On the money being paid what did the Captain do?

A. The Captain signed this certificate, and the recruit would then sign his name on the back of it; in Newark they had to sign their names underneath.

Q. The signing of the paper by the recruit was done upon the money being handed over by the Captain?

A. Yes; the blanks were furnished by the city officials.

Q. Do you mean by the city of Hoboken?

A. Yes; I believe I have got some in my house now furnished by Oouncilman McDermott to be used by any one that wanted them.

Q. Was the recruit to receive anything beyond what the Captain paid him?

A. No, sir, except the government bounty.

Q. Who was to receive the local bounties?

A. The man that paid the money.

Q. What did he take to indicate his right to the local bounties?

A. That scrip. 30

Q. These certificates were given up in the presence of the recruits?

A. Yes, sir.

Q. To the person who furnished the money to pay them?

A. Yes, sir.

And the said witness being *cross-examined* by counsel for the defendant testified as follows:

Q. You say the man who paid the money was to receive the local bounties; how do you know that?

A. I have had cases where the recruit wanted more money, and he was offered the scrip for it, and he would not receive it.

Q. Do you know anything about Bailey's case?

A. Not in this instance.

Q. The recruit would have nothing to do with the scrip?

A. No, sir.

Q. You say the recruit refused to enlist unless he got the  
10 money?

A. Yes, sir.

Q. He would not receive the scrip in payment?

A. As a general thing.

Q. You do not know whether Bailey refused to enlist without money, the full amount he was to receive or not?

A. I do not remember in this case.

Q. Do you remember Bailey at all?

A. No, I don't know as I do.

Whereupon the plaintiff again rested his cause.

20 Which being done, the counsel for the defendant moved that the plaintiff be called for the following reasons, because:

1. The Mayor and Council of the city of Hoboken had no legal power to pass a resolution, such as is offered in evidence, offering bounty for volunteers to serve in the army of the United States, and pledging the credit of the city of Hoboken for the payment of the same.

2. There is no evidence to show that the offer of bounty made by the city of Hoboken was the inducement or consid-  
30 eration upon which the plaintiff volunteered or was mustered into the United States service.

3. There is no evidence of any agreement or promise by the Mayor and Council of the city of Hoboken to pay the plaintiff the amount of money claimed, or the scrip that is mentioned in the plaintiff's declaration.

4. There is no evidence of any existing promise on the part of the defendant to pay the plaintiff anything which was considered by both parties at the time of the alleged acceptance.

5. The mere act of volunteering to serve in the army of the United States is not a sufficient consideration to support an assumpsit for the payment of bounty on a promise made by or on behalf of the defendant, a municipal corporation.

6. The evidence shows that this action is brought in the name of George W. Bailey, at the instance and request of a third party (James T. Hatfield) and without the knowledge or consent of the plaintiff of record.

7. There is no evidence to support this action showing that James T. Hatfield, the party who caused the action to be commenced, has any interest in any claim whatever which the plaintiff of record might have against the Mayor and council of the city of Hoboken.

8. There is no evidence of any assignment of any chose in action which the plaintiff ever had or ever could have against the defendants to James T. Hatfield, the prosecutor of this suit.

9. The Mayor and Council of the city of Hoboken had no legal authority to issue scrip.

Which motion, after argument, his Honor, the judge, denied, to which ruling of the court the defendant prayed a bill of exceptions, and the court sealed the exceptions accordingly.

J. D. BEDLE, [L.S.]  
Justice Supreme Court. 30

The defendant, to maintain and prove the issue aforesaid on its part, called as a witness, the said *Henry J. Mills*, who testified as follows :

*Q.* Can you state what was the price paid to volunteers and substitutes as bounties on or about the 18th of March, 1865?

*A.* I see by my memorandum, and this is the amount actually paid to volunteers; it has no reference to the brokers prices; I had nothing to do with the brokers prices: it is a memorandum kept by me at my table.

Witness reads from memorandum.

I notice here, substitutes, \$650, \$600; substitute three  
 10 years, \$900; volunteers, \$500; substitutes, \$675, \$600;  
 volunteer, \$550; volunteers, \$590, \$590, and so on up  
 to \$600; one man had scrip, I see, from Newark;  
 that is on the 17th of March; now on the 18th of March,  
 volunteers, \$590; substitutes, \$590; substitute, \$600, \$625,  
 \$800, \$600; volunteer, \$500; substitute, \$800, \$800; vol-  
 20unteer, \$500; substitute, three years, \$900, \$740; that was  
 on March 18th.

*Q.* Was Bailey put in at one or two years?

*A.* Two years; I see here a substitute for three years got  
 20 \$1,000.

*Q.* By plaintiff's counsel. See if you are not mistaken as to Bailey?

*A.* I speak from my memory; (looks at memorandum.) Marked on my memorandum two years; the certificate from Washington will show the correct time; the city was credited according to the number of years.

*Q.* State the price paid to volunteers and substitutes on or about the 12th day of April, 1865?

(Plaintiff's counsel objects to the question. Objection  
 30 overruled by the court.)

*A.* On the 11th, substitute \$550; volunteer, \$375, \$445, \$350, \$350, \$350, \$350; substitute \$400; volunteer, \$475; substitute, \$475; volunteer, \$375, \$350, \$350, \$400; on the 12th, \$450, \$400, \$350, \$400, \$425, \$350, \$450, \$500, \$400; then a man who received city scrip; recruit, \$400, \$400; substitute, \$500; recruit, \$400; then two men

who received city scrip ; recruit, \$500 ; recruit, \$400, \$400, \$400.

*Q.* Can you state the cause of the falling off in price between the 18th of March and the 12th of April ?

*A.* Always towards the close of a draft the price fell, and the men were plenty, and the demand less ; it was regulated like everything else by demand and supply ; of course there were other sections of the country that called these men as the quotas were filled, and they would go to places where they were not filled. 10

*Q.* Do you recollect when Lee surrendered ?

*A.* I recollect when we got intelligence of it ; I think it was about the 13th of April ; I refer to the surrender of Lee, not the taking of Richmond ; I do not know when Richmond was taken.

*Q.* Can you refresh your memory ?

*A.* From this circumstance, the surgeon felt so good about the surrender of Richmond that he swore that he would not do any work that day and cleared out, and I sent a guard for him and brought him back. 20

*Q.* Was it before the 12<sup>th</sup> ?

*A.* Yes ; the final intelligence we received was the order to stop work, it was on the morning of the 14th, before we commenced business.

*Q.* Have you any recollection of the first intelligence of Lee's surrender through the public newspapers ?

*A.* I have not.

*Q.* The intelligence you speak of was official intelligence coming from the offices ?

*A.* Yes ; that is the only intelligence we could act upon. 30

*Q.* When did you first get intelligence of Lee's surrender, I mean any intelligence ?

*A.* I cannot recollect about that.

*Q.* By the Court. Was the fact known of the surrender of Lee at the time of this recruiting on the 12th ?

*A.* I cannot say ; I have no recollection.

*Q.* After the intelligence of the fall of Richmond, state whether the prices paid to recruits and substitutes changed ?

*A.* There appears to have been some difference in them ; 40

my record shows that on the 7th of April recruits were bringing \$450 to \$500; three year recruits went for \$650.

Q. Inform us of the prices paid on the 1st and 2nd of April?

A. April 1st volunteers went for \$450, \$600, \$500, \$375, \$500, \$400, that is one year; April 3d, volunteers, \$555, \$550, \$450, \$500, \$480; April 4th, volunteers, \$450, \$500, \$575, \$580, \$500, \$450; substitutes, \$750 and \$600; April 5th, recruit three years, \$500; volunteer, one year, \$500.

10 And the said witness being *cross-examined*, by counsel for plaintiff, testified as follows:

Q. Did the draft actually continue up to the night of the 13th of April?

A. The draft had been made, I presume, for all of Hoboken, and the men held for service, but they had a certain time to fill up their quota, so that the drafted men should not go if the quota was filled or drafted men could get volunteers out of any other district to take their place, they were taken.

20 Q. You closed enlisting on the afternoon of the 13th about what time?

A. We generally closed from four to five o'clock.

And thereupon the said defendant called as a witness

Z. K. Pangborn, who being duly sworn according to law, testified as follows:

Q. You are publisher of the Jersey City Evening Journal now?

A. I am one of them.

Q. Were you the publisher of the Jersey City Times?

30 A. No, sir, I never was; I was editor.

Q. In April, 1865?

A. I was then editor of the Times.

Q. Have you a copy of the Times for that month before you?

A. I have a bound volume of that date.

Q. Turn to the issue of April 3d, 1865. Is there a dispatch published in that in reference to the capture of Richmond?

A. Yes, sir; on the 3d of April there was a dispatch published as follows: "Glory! Capital from the Rebel Capitol. Richmond Ours. How are you Copperheads!" and an extra with the official dispatch of Secretary Stanton.

Q. Was that paper circulated in Hoboken?

A. I presume it was there; we had subscribers there.

Q. Was not that dispatch published in all the papers?

A. I presume it was; our dispatch came through the Associated Press, and I presume it was in all the papers.

Q. Tell us when you received the official dispatch and published the same in your paper of the capture and surrender of Lee?

A. That is given on the 10th of April; the dispatch is dated April 9th, at 9 o'clock at night, signed E. M. Stanton.

And the defendant called as a witness

*William Buck*, who being duly sworn, testified as follows:

Q. Were you a member of the Hoboken common council in 1865?

A. I was until the first Monday in May. 20

Q. Were you on a bounty committee for the purpose of securing recruits to fill the quota?

A. I was in 1864, not in 1865; I was not on the committee for the last call of volunteers.

Q. Did your committee authorize any person to make contracts with volunteers or substitutes?

A. We did at one time; I think it was the third or second call; I was not on the last call.

Q. Were you a member of the council during this term?

A. I was. 30

And the said defendant further called as a witness,

*John McDermott*, who being duly sworn, testified as follows:

Q. Were you a member of the council of the city of Hoboken for 1865?

A. Yes, sir.

Q. A member of the bounty committee to fill the quota under the call of December, 1864?

A. I was.

Q. Who else was on that committee?

A. Whele and Chamberlain; I was chairman of that committee.

Q. Did that committee of which you were a member hold any meeting after their appointment?

A. We held a meeting one night in Whele's house, one  
10 or two members, the Mayor and I.

Q. What was done by that committee at that time? I want to know whether the committee authorized any person to make contracts with volunteers to fill the quota at that time?

A. No, sir; not at that time.

Q. Did your committee hold any meeting after that?

A. Not that I remember officially.

Q. Did the committee authorize any member of that committee or any other person to make any contracts with  
20 the volunteers concerning the filling of the quota?

A. No, sir; not that I know of.

Q. By the Court. Mr. Chamberlain says you requested him to act as chairman in your place?

A. I never did; he asked me one time to go down to Newark with him; I told him I should be of no assistance with him, that he was able to do the business himself.

Q. Were you in the council when this resolution was passed on the 18th of March?

A. Yes, sir; I introduced it.

30 Q. Do you know how it come to be worded in the peculiar manner in which it is?

(Whereupon the counsel of the plaintiff did interpose and object to the witness being allowed to answer the said question, and the same was thereupon overruled by his Honor, the said justice.)

Did you have any conversation with General Hatfield in relation to enlisting men under that call?

A. I had, in connection with the Mayor, previous to the introduction of that resolution ; a few days before.

Q. In reference to that resolution ?

A. In reference to the furnishing of substitutes or volunteers.

And the said defendant further called as a witness

*Robert Reed*, who being duly sworn, testified as follows :

Q. Were you a member of the council of Hoboken in 1865 ?

A. Yes, sir ; in the spring of 1865. 10

Q. Do you recollect of going to Newark on or about the 12th of April ?

A. I recollect of going there on the morning of the 13th.

Q. For what purpose ?

A. To inform parties who were recruiting men that I thought the resolution did not apply to the men they were enlisting.

Q. Did you have a conversation with any of them about it ?

A. I had a conversation with several gentlemen about it ; 20 the only ones I knew personally were General Hatfield and Mr. Whele.

Whereupon counsel for the defendant proposed to show that the witness had informed these parties, Hatfield and Whele, that the resolution would not apply to the men they had enlisted.

Which offer was objected to by the counsel for the plaintiff, and his Honor, the said justice, held and affirmed that the evidence offered was irrelevant, and inadmissible.

To which ruling of his Honor, the said justice, the said 30 defendant prayed a bill of exceptions, and the same was sealed accordingly.

J. D. BEDLE, [L s.]  
Justice Supreme Court.

Q. Were you there at any other time ?

A. Not particularly in relation to that business.

Q. Did you have any conversation with Hatfield in relation to this resolution at any other time ?

A. No, sir.

Q. You had no other conversation with Hatfield than on the 13th ?

A. I do not recollect any other at all ; I did not know that he was engaged in the business at all.

10 Q. Were you connected with this committee ?

A. *Ex-officio*, as chairman of the council.

Q. Did your committee, or the council ever authorize General Hatfield to enlist men for the city of Hoboken ?

A. Not to my knowledge.

And the said witness being *cross-examined*, by the counsel for the plaintiff, testified as follows :

Q. There were certificates issued to General Hatfield for men enlisted under this resolution ?

A. I don't know without looking at the record ; I do not  
20 recollect of any.

Q. Didn't you swear on the 17th of September, 1869, before William T. Hoffman that there were ten certificates issued to Hatfield and Idell ?

A. I might have done so from looking at the record ; I cannot tell from my own personal knowledge about it ; if I had the privilege of looking over the scrip book I could tell ; I cannot tell of my own knowledge.

Q. Are you sure this time you spoke of was the 13th of April ?

30 A. Yes ; I am positive of it ; it was Thursday morning.

The testimony in the cause having been concluded, and the parties having rested the cause, the defendant requested his Honor, the said justice, to charge the jury that if they believe from the evidence that there was fraud in putting in the recruit, (the plaintiff), that they should find for the defendants.

His Honor, the said justice, declined to charge as above

requested, but charged the jury, That there is no evidence of fraud sufficient to warrant the finding a verdict in favor of the defendants,

Whereupon the counsel for the defendants, concerning that by the law of the land, the said justice should have charged and instructed the jury as above requested, prayed that his Honor, the said justice, would set his hand and seal to this bill of exceptions to the said opinion of his Honor, the said justice, and whereupon it was sealed accordingly.

J. D. BEDLE, [L.S.] 10  
*Justice Supreme Court.*

And his Honor, the said justice, thereupon proceeded to charge the said jury as follows :

“Gentlemen of the jury : In this case most of the questions have been settled by the Supreme Court. There are some other matters raised, but the court charges you that they do not in any way change the aspect of the case as it was before the Supreme Court. The court therefore charge you that you find a verdict for the plaintiff in this case for the amount of scrip, three hundred and fifty dollars, and the interest on it, one hundred and sixty-three dollars and thirty-three cents, making five hundred and thirteen dollars and thirty-three cents. 20

Thereupon the counsel for the defendants made their exceptions to the said ruling of his Honor, the said justice, and prayed that his Honor, the said justice, would set his hand and seal to this bill of exceptions, and it was sealed accordingly.

[L.S.] J. D. BEDLE.

A true copy from the original on file in my office. 30

HENRY C. KELSEY,  
*Clerk of Court of Errors and Appeals.*

## COURT OF ERRORS AND APPEALS.

THE MAYOR AND COUNCIL OF THE  
CITY OF HOBOKEN

vs.

GEORGE W. BAILEY.

} *Assignment of Errors.*

Afterwards, that is to say, on the third Tuesday of June, in the year of our Lord one thousand eight hundred and seventy-two, in the Court of Errors and Appeals, in the last resort in all cases of the state of New Jersey, come the said,  
10 The Mayor and Council of the city of Hoboken, by John C. Besson, their attorney, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in giving the verdict and judgment aforesaid, there is manifest error in this, to wit :

That the declaration aforesaid, and the matters therein contained are not sufficient in law for the said George W. Bailey to have his said action against the said, the Mayor and council of the city of Hoboken.

20 There is also error in this, to wit : for that the said justice, before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid admitted in evidence a certain paper, purporting to be a certified copy of the proclamation of the President of the United States, dated December nineteenth, eighteen hundred and sixty-four, certified March third, eighteen hundred and sixty-nine, by William H. Seward, secretary of the state of the United States, under the official seal of his department, as in the bill of exceptions is mentioned.

30 There is also error in this, to wit : for that the said justice before whom, &c., at and upon the aforesaid trial of the

said issue did admit in evidence a copy of a resolution passed by the council of the city of Hoboken on the eighteenth day of March, 1865, and approved by the Mayor of said city on the twentieth day of March, 1865, as mentioned in the said bill of exceptions; whereas, by the law of the land, the said justice ought not to have admitted the said resolution in evidence in this action, because the said, the Mayor and Council of the city of Hoboken had no lawful authority to pass the said resolution offering to pay bounty money for volunteering to serve in the army of the United States. 10

There is also error in this, to wit: for that after the said plaintiff had closed the testimony, offered to maintain and prove the said issue on his part, and had rested his case on the evidence therein, as mentioned in the said bill of exceptions, and thereupon the said defendants, by their counsel, moved that the said plaintiff be called; and the said justice before whom the said issue was tried, denied the said motion of the said defendants, as is mentioned in the said bill of exceptions; whereas, by the law of the land, the said justice ought to have granted the said motion, because 20

1. The Mayor and Council of the city of Hoboken had no legal power to pass a resolution, such as was offered and received in evidence, offering to pay bounty money to volunteers to serve in the army of the United States, and pledging the credit of the city of Hoboken for the payment of the same.

2. Because there is no evidence to show that the offer of bounty made by the city of Hoboken was the inducement or consideration upon which the plaintiff volunteered or was mustered into the United States service. 30

3. Because there is no evidence of any agreement or promise by the Mayor and Council of the city of Hoboken to pay the plaintiff the amount of money claimed or the scrip that is mentioned in the plaintiff's declaration.

4. Because there is no evidence of any existing promise on the part of the said, the Mayor and Council of the city of

Hoboken, to pay to the said George W. Bailey anything which was considered by both parties at the time of the alleged acceptance.

5. Because the mere act of volunteering to serve in the army of the United States is not a sufficient consideration to support an assumpsit for the payment of bounty on a promise made by or on behalf of the Mayor and Council of the city of Hoboken, a municipal corporation.

10 6. Because the evidence produced on behalf of the said plaintiff, George W. Bailey, shows, as mentioned and stated in the said bill of exceptions, that this action was brought in the name of George W. Bailey, at the instance and request of a third party—James T. Hatfield—and without the knowledge or consent of the said George W. Bailey, plaintiff of record.

7. Because there is no evidence to support this action showing that James T. Hatfield, the party who caused the action to be commenced, has any interest in any claim whatever which the plaintiff of record might have against the  
20 Mayor and Council of the city of Hoboken.

8. Because there is no evidence of any assignment of any chose in action, which the plaintiff of record, George W. Bailey, ever had or ever could have against the said, the Mayor and Council of the city of Hoboken, to the said James T. Hatfield, the prosecutor of this suit.

9. Because the Mayor and Council of the city of Hoboken had no legal authority to issue scrip in manner and form as in said declaration it is alleged they proposed and promised to do.

30 And there is error in this, to wit :

That the testimony in the cause having been concluded, and the parties having rested the cause, the counsel for the defendants requested his Honor, the said justice, to charge the jury that if they believed from the evidence that there

was fraud in putting in the recruit, (the plaintiff of record), that they should find for the defendants; whereupon the said justice declined to charge as above requested, but charged the jury, as mentioned in the said bill of exceptions, that there was no evidence of fraud sufficient to warrant finding a verdict in favor of the defendants; whereas, by the law of the land, the said justice should have charged the jury as requested by the counsel of the said, the Mayor and Council of the city of Hoboken, and allowed the jury to find upon the question of fraud. 10

And there is error in this, to wit: for that the said justice charged the said jury as follows:

“In this case most of the questions have been settled by the Supreme Court. There are some other matters raised, but the court charge you that they do not in any way change the aspect of the case as it was before the Supreme Court. The court therefore charge you that you find a verdict for the plaintiff in this case for the amount of the scrip three hundred and fifty dollars, and the interest on it, one hundred and sixty-three dollars and thirty-three cents, making five hundred and thirteen dollars and thirty-three cents;” whereas, by the law of the land, the said justice should have submitted the testimony and evidence mentioned in said bill of exceptions to the jury, and charged the jury thereon to find a verdict in favor of the Mayor and Council of the city of Hoboken, the defendants, and against the said George W. Bailey. 20

There is also error in this, to wit: that by the record aforesaid it appears that judgment in the plea aforesaid was given for the aforesaid George W. Bailey against the said, 30 the Mayor and Council of the city of Hoboken, when by the law of the land, judgment in the said plea ought to have been given for the said, the Mayor and Council of the city of Hoboken against the said George W. Bailey; therefore in this there is manifest error.

Therefore the said, the Mayor and Council of the city of Hoboken pray that the judgment aforesaid, by reason of the aforesaid errors, and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and held for nothing, and that the said, the Mayor and Council 40

of the city of Hoboken may be restored to all things they have lost on occasion of the said judgment, and that the prosecutor of said plea in the name of the said George W. Bailey may rejoin to the said errors, &c.

JOHN C. BESSON,  
*Attorney for and of Plaintiff in Error.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN,  <i>v.</i>  GEORGE W. BAILEY.	}	<i>Joinder in Error.</i>
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And hereupon afterwards, to wit : on the second Tuesday in July, A. D. eighteen hundred and seventy-two, the said George W. Bailey, by Dixon & Collins, his attorneys, came into court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and he prays that the court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

DIXON & COLLINS,  
*Attorneys.*  
 JONATHAN DIXON,  
*of Counsel with Defendants.*

## EXHIBIT 1.

Copy of certificate of Department of State, and proclamation of the President of the United States made on the 19th day of December, 1864.

UNITED STATES OF AMERICA. }  
 Department of State. }

To all whom these presents shall come, Greeting :

I certify, That the annexed is a true copy of a proclamation made by the President of the United States on the nineteenth day of December, one thousand eight hundred 10 and sixty four, the original of which is on file in this Department.

In testimony whereof, I, William H. Seward, Secretary of State of the United States have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

[L.S.]

Done at the city of Washington this third day of March, A. D. 1869, and of the Independence of the United States of America, the ninety-third.

WILLIAM H. SEWARD. 20

## A PROCLAMATION.

BY THE PRESIDENT OF THE UNITED STATES.

Whereas, By the act approved July 4, 1864, entitled "An act further to regulate and provide for the enrolling and calling out the national forces, and for other purposes," it is provided that the President of the United States may, at his discretion, at any time hereafter, call for any number of men as volunteers, for the respective terms of one, two and three years, for military service, and "that in case the quota, or  
 10 any part thereof, of any town, township, ward of a city, precinct or election district, or of any county not so subdivided, shall not be filled within the space of fifty days after such call, then the President shall immediately order a draft for one year to fill such quota or any part thereof which may be unfilled."

And whereas, by the credits allowed in accordance with the act of Congress on the call for five hundred thousand men, made July 18, 1864, the number of men to be obtained under that call was reduced to two hundred and eighty  
 20 thousand; and whereas, the operations of the enemy in certain states have rendered it impracticable to procure from them their full quotas of troops under said call; and whereas, from the foregoing causes but two hundred and forty thousand men have been put into the army, navy and marine corps under the said call of July 18, 1864, leaving a deficiency on that call of two hundred and sixty thousand, (260,000).

Now therefore, I, Abraham Lincoln, President of the United States of America, in order to supply the aforesaid deficiency, and to provide for casualties in the military and  
 30 naval service of the United States, do issue this, my call for three hundred thousand (300,000) volunteers to serve for one, two or three years. The quotas of the states, districts and sub-districts under this call will be assigned by the War Department through the bureau of the Provost Marshal General of the United States, and "in case the quota or any part thereof of any town, township, ward of a city,

precinct or election district, or of any county not so subdivided, shall not be filled" before the fifteenth day of February, eighteen hundred and sixty-five, then a draft shall be made to fill such quota or any part thereof, under this call, which may be unfilled on said fifteenth day of February, 1865.

In testimony whereof, I have hereunto set my hand, and  
[L.S.] caused the seal of the United States to be  
affixed.

Done at the city of Washington, the nineteenth day of 10  
December in the year of our Lord, one thousand eight hun-  
dred and sixty-four, and of the Independence of the United  
States the eighty-ninth.

ABRAHAM LINCOLN.

By the President.

WILLIAM H. SEWARD,  
*Secretary of State.*

## EXHIBIT 2.

Resolution of the Mayor and Council of the city of  
Hoboken passed March 18th, 1865; approved March 20th, 20  
1865.

*Resolved*, That a city scrip for the amount of three  
hundred and fifty dollars, in addition to the county bounty  
of four hundred dollars be issued to every drafted man or  
volunteer from this city, entering the service under the late  
call of the President of the United States for three hundred  
thousand men; *provided*, such drafted man or volunteer  
shall enter the military service of the United States, or fur-  
nish an acceptable substitute for one or more years, and  
shall be duly credited to the quota of this city under the 30  
present call."

(Taken from the minutes of the Council of the city of  
Hoboken of March 18, 1865.)

## EXHIBIT 3.

*Copy—*

## WAR DEPARTMENT.

ADJUTANT GENERAL'S OFFICE. }  
 Washington, May 26th, 1870. }

It appears from the records of this office, of which I am legal custodian, that the information contained in this annexed list is truly copied from the "Muster and Descriptive Roll of Volunteers," kept by the Provost Marshal of  
 10 the Fifth Congressional District of New Jersey.

E. D. TOWNSEND,  
*Adjutant General.*

Be it known that Edward D. Townsend, who has signed the foregoing certificate is the adjutant general of the army of the United States, and that to his attestation as such full faith and credit are and ought to be given.

In testimony whereof, I, William W. Belknap, Secretary of War, have herewith set my hand and caused  
 [L.S.] the seal of the Department of War of the United States of America to be affixed on this 26th day  
 20 of May, one thousand eight hundred and seventy.

WILLIAM W. BELKNAP.  
*Secretary of War.*

Name of Volunteer.	When Enlisted.	Where Enlisted.	By whom Enlisted and Mustered.	Where Credited.		
				Cong. Dist.	Sub-Dist.	Name of Town.
Geo. W. Bailey	1865. April 12	Newark, N. J	Capt. H. J. Mills.	5	21	Hoboken.

## EXHIBIT 4.

This is to certify that George W. Bailey was entered into the military service of the United States from the Second ward of the city of Hoboken, Hudson County, New Jersey, as a volunteer, one year, and credited on the call for 300,000 men.

H. J. MILLS,  
*Captain and Provost Marshal.*

I, J. T. Hatfield, chosen freeholder of the Second ward of the city of Hoboken, certify that James T. Hatfield is 10 entitled to the sum of \$400 for said volunteer.

J. T. HATFIELD.

Hoboken, N. J. April 12, 1865.

*Endorsed—*

GEORGE W. BAILEY.

## EXHIBIT 5.

At a meeting of the Council of the city of Hoboken held at the council chamber, Odd Fellow's hall, on Tuesday evening, May 25th, 1865,

Councilman Backer offered the following, which was read and adopted:

*Whereas*, Certain parties claim to have put in volunteers on the last draft to the credit of the city of Hoboken; and

10 *Whereas*, A committee of this council on the 16th day of May, 1865, called at the Provost Marshal's office in the city of Newark, and endeavored to obtain the names of the volunteers credited to the city Hoboken, the brokers or parties who put them in, and the amount of money paid to the men by said brokers or other persons, and also the actual residence of the volunteers at the time of said enlistments; and

*Whereas*, They were unable to obtain the names of the brokers, the amount of money paid, or the residence of the volunteers; and

20 *Whereas*, It is important to obtain these facts in order to determine and protect the rights of the city; therefore, be it

*Resolved*, That Col. John Ely, A. A. P. M. General at Trenton, be requested to furnish such aid or assistance to the corporate authorities of this city as will enable them to procure the information they desire, and which it is essential for them to obtain in order to properly determine the rights of the city and the rights of those claiming to be entitled to receive the sum of \$350 from the city for each of these vol-  
30 unteers; and further, that the chairman of the bounty committee be directed to send Col. Ely a copy of this resolution, together with a statement of facts in relation to this matter, with a request that he will communicate his determination in the matter.

GEORGE W. BACKER,  
*Chairman of Bounty Committee.*

## EXHIBIT 6.

Council proceedings May 31st, 1865.

A communication signed by Charles W. Idell, James T. Hatfield, Thomas H. Edgar and Louis H. Ostendorff, was received, setting forth that they held sixty-four certificates of the Provost Marshal for the mustering in of that number of volunteers credited to the city of Hoboken on the late call, and presenting a formal demand for the issuing to them of the city scrip for the amount of \$350 for each volunteer.

Referred to the bounty committee.

10

## EXHIBIT 7.

Council proceedings June 15, 1865.

The bounty committee reported the following :

The bounty committee of this Council, to which were specially appointed his Honor, the Mayor, and the chairman of the Council, to whom were referred the petitions of John M. Board, Charles W. Idell, James T. Hatfield, Thomas Edgar and Louis H. Ostendorff, for the issuance to them (the petitioners) of the city bounty scrip of \$350, as per resolution of the Council, passed March 18, 1865, a copy of which is annexed, would report that they visited the Provost Marshal at Newark, and endeavored to ascertain in his office such facts as they deemed it necessary to be known before deciding upon the matter.

Being unable to ascertain such facts they visited acting Assistant Provost Marshal General at Trenton, who directed them to make their communication to him in writing.

Thereupon they addressed a letter to him on the 27th day of May last, hereto annexed, and received an answer which is endorsed thereon. This answer does not give the information sought for. Your committee were therefore compelled to seek for information from other sources, and have arrived at the following conclusions, viz :

*First.* That it was a matter of discussion among the parties interested as to whether the resolution justified the crediting of men to the city of Hoboken who were not residents therein, thus showing that these parties did not think the resolution clearly gave them the power to have  
10 non-residents accredited as volunteers.

*Second.* That the men claimed to be credited to the city of Hoboken were not residents of the city of Hoboken.

*Third.* That the Mayor and Council never authorized or sanctioned the crediting of these men on the quotas of the different wards of this city.

*Fourth.* That on the 13th day of April last Robert A. Reed, then Chairman of the Council, hearing that certain parties were attempting to have men improperly credited to  
20 this city, proceeded to Newark and gave notice that the city of Hoboken would not recognize such credits.

*Fifth.* That the Mayor never received any intimation of the above attempts to improperly credit men to this city until the day after (April 14th), on which day the order of the Secretary of War stopping recruiting was published, and he (the Mayor) immediately directed that no city scrip should be issued to any of these parties, refusing to recognize on the part of the city any of these attempted credits.

*Sixth.* That the city, under the resolution hereunto  
30 annexed, never intended to pay any bounty to any volunteer except he who was a resident of the city.

*Seventh.* That the city is not legally compelled to issue the scrip asked for.

*Eighth.* That the scrip should not be issued to the petitioners.

All of which is respectfully submitted.

GEORGE W. BACKER,  
HERMAN H. BRUNJES,  
JOHN McDERMOTT,  
FREDERICK B. OGDEN, *Mayor*,  
E. V. S. BESSON, *Chairman Council Committee.*

Dated June 15, 1865.

10

*Resolved,* That a city scrip for the amount of \$350, in addition to the county bounty of \$400, be issued to every drafted man or volunteer from this city entering the service under the late call of the President of the United States for 300,000 men; *provided* such drafted man or volunteer shall enter the military service of the United States, or furnish an acceptable substitute for one or more years, and shall be duly credited to the quota of the city under the present call.

*Copy.—*

20

HOBOKEN, May 27th, 1867.

COL. JOHN ELY, *A. A. P. M. General, Trenton, N. J. :*

DEAR SIR:—In accordance with the enclosed resolution, I respectfully request answers to the following questions, to wit:

*First.* The names of all volunteers credited to the city of Hoboken under the late call of the President.

*Second.* The actual residence of each volunteer.

*Third.* The names of the brokers who caused these men to be put in the service.

30

*Fourth.* The amount of money paid to each volunteer and by whom.

*Fifth.* The instructions issued to the Assistant Provost Marshals by the Provost Marshal General, under the act of March 3, 18 5.

A committee of the Council endeavored to procure this information at the office of the Provost Marshal in Newark, but were unable to ascertain anything further than the names of the volunteers credited to the city. They found  
 10 that there was a book there containing the names of the brokers who put men in, and the amount of money paid to each man by each broker, but they were unable to see this book, although they requested it, nor were they given the information it contained.

The Council have made other efforts to procure the information desired but have so far failed. They believe it is for the interest of the city that they should obtain it; they cannot deal intelligently or justly with the claims of brokers or their assignees until they obtain it. They respectfully  
 20 request that you will afford them your official aid to procure a full and satisfactory answer to the various questions above stated, either by sending the information to the subscriber, or by issuing such orders to your subordinates as will enable the Council to obtain this information, or in such other mode you may deem proper.

I remain, very respectfully, your obedient servant,

GEORGE W. BACKER,

*Chairman Bounty Committee of Council.*

30 OFFICE OF A. A. PROV. M. GEN., N. J. }  
 TRENTON, May 31, 1865. }

Respectfully returned.

The records of this office do not show the names of recruits, or place of residence credited to any county, town or sub-district in the state. The number credited only appears;

the names of the brokers are not recorded, nor are they known at this office.

The orders of this office are that each volunteer or substitute shall receive, in the presence of the District Provost Marshal, all the money that each separate sub-district or individual pays as local bounty for volunteers or premium for substitutes.

The instructions issued under the act of March 3rd, 1865, are the act itself. If it has been violated in any case, the case will be investigated when specifically brought before 10 this department.

The regulations of the department forbid any Provost Marshal, or other employees of their offices from being interested in or receiving money for procuration of recruits, volunteers or substitutes, and unless it is charged that the Provost Marshal of your district, or his employees were so engaged, this office cannot order an investigation of this matter, as it appears only to relate to your city authorities and their brokers.

JOHN ELY,                    20  
*Col. and A. A. P. M. Gen.*

On motion of Councilman Schmershal, the report was received, and with the accompanying papers ordered to be entered at large on the minutes by the following vote:

Ayes—Councilmen Backer, Brunjes, Macy, McDermott, Pruden, Schinzel, Schmershal and Chairman Besson.

Nay—Councilman Chamberlain.

CITY CLERK'S OFFICE, }  
HOBOKEN, Sept. 20, 1869. }

I certify that the foregoing is a true copy from the books 30 and records on file in this office.

JOHN KENNEDY.  
*City Clerk.*