Hough & Yard, Printers, Chancery-court, Trenton.

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, *ex rel.*, ALBERTUS K. WAGNER, *et al.*, prosecutors, *vs.* DAVID JACKSON, collector of taxes of the township of Delaware in the county of Hunterdon.	*Writ of error. Returnable to the March Term*, 1865. A. V. VAN FLEET, *Attorney.*

New Jersey, to wit:—The State of New Jersey to the Justices of the Supreme Court of Judicature of said state, greeting:

Because in the record and proceedings, and also in the giving of judgment in a certain matter of assessment of taxes, which was by writ of *certiorari* removed into our Supreme Court, before the judges thereof, at the suit of the State of New Jersey, on the relation of Albertus K. Wagner, Peter O. Holcombe, Ferdinand S. Holcombe, Elisha E. Holcombe, William L. Hoppock, Joseph Lair, junior, John Finney, 10 Dennis V. L. Schenck, Hiram Moore, John F. Shepherd, Daniel Poulson, Elias Holcombe, John Sharp, George Hoppock, William C. Veghte, William Bonham, Cornelius Q. Higgins, Henry F. Quick, John Gordon, senior, John W. Reading, Green Sergeant, Asa Moore, Manuel H. Green, Wilson B. Rittenhouse, Wilson Hunt, Rufus Runkle, John Y. Runkle, Lewis H. Lawshe, Horatio Runkle, James J. Fisher, Jacob S. Van Marter, George W. Sharp, Eden Hunt, William L. Hoppock, junior, William R. Allen, John F. S. Smith, John Green, senior, Joseph Housel, Silas Huffman, 20 Samuel Higgins, John B. Fisher, Joseph Haines, Charles Green, Morgan R. Cox, Jacob R. Lawshe, William Fisher, senior, Gideon Moore, Cornelius Q. Fisher, George W. Runk, James Wilson, Joseph Reading, Issachar Hoagland,

and William H. Moore, against David Jackson, collector of taxes of the township of Delaware, in the county of Hunterdon and State of New Jersey, manifest error hath intervened, as is said, to the great damage of the said relators, as by their complaint we are informed:

We being willing that the error, if any there be, should in due manner be considered, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be given thereupon, then you distinctly and
10 openly send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to the Court of Errors and Appeals in the last resort in all causes at law, to be held at Trenton on the second Tuesday of March, instant, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

Witness Hon. Henry W. Green, our Chancellor, at Trenton, the seventh day of March, in the year of our Lord one thou-
20 sand eight hundred and sixty-five.

W. S. JOHNSON, *Clerk.*

A. V. VAN FLEET, *Att'y.*

The answer of the Justices of the Supreme Court within mentioned:

The record and proceedings within mentioned, as fully as the same remain before us, we certify and send to the Court of Errors and Appeals, as within we are commanded, in a schedule to this writ annexed.

M. BEASLEY, *Ch. Jus.*

Schedule.

NEW JERSEY SUPREME COURT.

David Jackson, collector for the township of Delaware, in the county of Hunterdon, and State of New Jersey, *ads.* The State—*ex rel.*, Albertus K. Wagner *et al.*	*On certiorari. In matter of tax. Judgment of affirmance.* B. Van Syckel, *Att'y.*

As yet of the Term of June, A. D. eighteen hundred and sixty-four. 10

Witness MERCER BEASLEY, Esq., *Chief Justice.*

CHAS P. SMITH, *Cl'k.*

New Jersey, *ss.*—Be it remembered, that heretofore, to wit, on the seventeenth day of June, A. D. eighteen hundred and sixty-four, the State of New Jersey sent to David Jackson, collector of taxes for the township of Delaware, in the county of Hunterdon, and State of New Jersey, its writ of *certiorari* to remove into the Supreme Court of said state, before the justices thereof, pursuant to the statute in such 20 case made and provided, certain assessments of taxes made in said township upon the persons, property, and estate of said relators above named, in assessing the tax ordered and directed to be assessed and raised by a town meeting, held in the said township on the seventeenth day of May, in the year last aforesaid, and the duplicate thereof in the hands of said collector, with all things touching and concerning the same, that therein might be done what of right and according to the laws and constitution of this state ought to be done: which said writ was afterwards, to wit, on the thir- 30 tieth day of June aforesaid, by said collector, pursuant to the command thereof, returned to our said Supreme Court, at Trenton, before the justices thereof, with a certain schedule annexed thereto, which said schedule contains the words and figures following, to wit:

In pursuance of the command of the annexed writ of *certiorari*, I, David Jackson, collector of taxes therein named, do make return thereto as follows:

I do certify the following to be a true copy of the assessment against the persons in said writ named, and of the duplicate thereof, to wit:

	Names.	Acres of land.	Valuation of land.	Valuation of personal.	Taxable property.	Poll.	Amount of tax.
10	Albertus K. Wagner,	141	$8460	$1000	$8970	$3.88	$156.37
	P. O. Holcombe & E. Holcombe,	120	7400	21500	28900	7.75	499.05
	Ferdinand S. Holcombe,	143	8600	1000	4300	3.88	76.98
	Elisha E. Holcombe,	172	9675	800	9675	3.88	168.36
	Wm. L. Hoppock & Sons,	102	18000	2500	18200	11.64	321.04
	Joseph Lair, jun.,	109	6400	800	7200	3.88	126.28
	John Finney,	126	9000	6000	11800	3.88	204.48
	Dennis V. L. Schenck,	72	4300	500	4800	3.88	85.48
	Hiram Moore,	100	8000	1600	9600	3.88	167.08
	John F. Shepherd,	1	650	400	1050	3.88	21.73
20	Daniel Poulson,	54	3500	1600	5100	3.88	90.58
	John Sharp,	125	6200	5200	11400	3.88	197.68
	George Hoppock,	165	6000	2000	8000	3.88	139.88
	William C. Veghte,			2000	2000	7.75	41.75
	William Bonham,	3	1300	2500	3800	3.88	68.48
	Cornelius Q. Higgins,	48	3400	800	3750	3.88	67.63
	Henry F. Quick and Rhoda Quick,	31	2400	800	2600	3.88	48.08
	John Gordon, sen.,	118	6000	7600	13600	3.88	235.08
	John W. Reading,	1	525	2800	3325	3.88	60.41
	Green Sergeant,	173	10000	1100	7850	3.88	137.33
30	Asa Moore,	151	8280	1000	8200	3.88	143.28
	Manuel H. Green,	1	1800	400	2200	3.88	41.28
	Wilson B. Rittenhouse,	63	3600	4000	7600	3.88	133.08
	Wilson Hunt,	35	2500	400	1700	3.88	32.78
	Rufus Runkle & Wm. N. Runkle,	242	9600	4000	13600	15.50	246.70
	John Y. Runkle,	75	3750	600	4350	3.88	77.83
	Lewis H. Lawshe,	75	3576	600	3876	3.88	69.77
	Horatio Runkle,	63	4200	1800	6000	3.88	105.88
	James J. Fisher,	123	7380	4600	11980	3.88	207.54
	Jacob S. Van Marter,	111	5600	1000	3060	3.88	55.90
40	George W. Sharp,	71	7500	2000	5900	3.88	104.18
	Eden Hunt and Clarkson Hunt,	91	6000	750	5250	11.63	100.88
	W. L. Hoppock & S. C. Hoppock,	1	400		400		6.80
	William R. Allen,	100	5000	600	1000	3.88	20.88
	John F. S. Smith,			200	200	3.88	7.28
	John Green, sen.,	72	6200	800	6600	3.88	116.08
	Joseph Housel,	2	1000	4500	5500	3.88	97.38
	Silas Huffman and Wm. Fisher,	73	3600	600	950	7.75	23.90
	Samuel Higgins,	107	5300	1000	6300	3.88	110.98

Names.	Acres of land.	Valuation of land.	Valuation of personal.	Taxable property	Poll	Amount of tax.
John B. Fisher,	65	$2925	$500		$3.88	$3.88
Joseph Haines,	102	5100	5300	$10400	3.88	180.68
Silas Huffman,			200	200		3.40
Charles Green,	83	4150	800	3600	3.88	65.08
Morgan R. Cox,	19	1400	250	900	3.88	19.18
Jacob R. Lawshe,	15	600	800	400	3.88	10.68
William P. Fisher, sen.,	237	10400	3000	13400	3.88	231.68
Gideon Moore,					7.75	7.75
Cornelius Q. Fisher,	151	7250	800	7860	3.88	137.50
George W. Runk,	8	800	300	750	7.75	20.50
James Wilson,	250	13800	1500	6300	3.88	110.98
Joseph Reading,	80	3820	500	3320	3.88	60.32
Issachar Hoagland,	200	12000	20000	32000	3.88	547.88
William H. Moore,	152	9100	700	7250	3.88	127.13

In witness whereof, I have hereto set my hand and seal this twenty-eighth day of June, eighteen hundred and sixty-four.

David Jackson, *Collector.* [L.S.]

And hereupon the said relators, by A. V. Van Fleet, their attorney, pray that the assessments aforesaid may be set aside, reversed, and made null and void for certain reasons assigned.

But because our said court here are not advised what judgment to give of and upon the premises, a day is given to the parties aforesaid, to wit, until, &c., to hear judgment thereon, because, &c.

And now, to wit, at the term of February, A. D. eighteen hundred and sixty-five, to which time this cause has been continued before our said Supreme Court, at Trenton, come as well the said relators, by their attorney aforesaid, as the said David Jackson, collector as aforesaid, by B. Van Syckel, his attorney, and hereupon all and singular the premises being seen, and by the said court here fully understood, it appears to our said court here that the said assessments have been legally and properly made, except as to the-poll tax of three dollars and eighty-eight cents assessed against the said William C. Veghte and Clarkson Hunt, who were married men, and not liable to a poll-tax as such.

Therefore it is considered that the said relators take noth-

ing by their said writ, but that the assessments aforesaid, in form aforesaid made (except as above excepted) be affirmed as valid and lawful. And it is further considered that the said David Jackson, collector, &c., as aforesaid, do recover against the relators named in said writ the sum of dollars and cents, his costs and charges by him about his defence in this behalf expended, by the court now here adjudged to him and with his assent.

Judgment signed this eighth day of March, A. D. eighteen
10 hundred and sixty-five.

M. BEASLEY, *Ch. Justice.*

I, Charles P. Smith, clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true transcript of the record of the judgment in the case above stated, as the same remains in my office.

In testimony whereof, I have hereto set my hand and the seal of said court, at Trenton, this 14th day of March, A. D. eighteen hundred and sixty-five.

CHAS. P. SMITH.

20

Affidavits and Papers Annexed.

[Filed June 17, 1864.]

The following are the proceedings of a special town meeting, held on the 17th day of May, A. D. 1864, at the house of George W. Comly, in Sergeantsville, in the township of Delaware, agreeably to the directions of the township committee, in accordance with a special act of the legislature, approved March 25th, 1864.

Between the hours of eleven and twelve o'clock, the meeting was called to order by A. B. Rittenhouse, town clerk,
30 when John T. Sergeant was elected moderator. The 7th section of the law regulating town meetings was read by the clerk, when a certified copy of the act was produced and read by the clerk. Evidence was then produced to show that the notices required by said act had been lawfully set up, when the following resolutions were offered by Isaac S. Crammer:

Resolved, That the sum of thirty-one thousand dollars shall be raised by assessment and taxation, in accordance with the requirements of a special act of the legislature, approved March twenty-fifth, eighteen hundred and sixty-four, for the purpose of enabling us to raise this tax.

Resolved, That the sum so ordered to be raised, or such part thereof as shall come into the hands of the collector, shall be applied by him to the payment of the commutation money for the exemption from the draft of such persons as shall be drafted and accepted for the township of Delaware 10 at the ensuing draft (the one now ordered).

Resolved, That Mahlon Smith, Garret S. Bellis, and Henry Wood be and they are hereby appointed a committee to advise with the collector in reference to the disbursement of said moneys, and that the collector, while acting under their advice and instructions, shall be held harmless.

Resolved, That the township collector and the committee hereby appointed shall be and are hereby authorized to borrow, on the faith of the inhabitants of the township, all or any part of the above named sum of money, if the same is 20 wanted before it can be assessed and collected.

The resolutions were read by the clerk, when a vote was taken on them. A. K. Wagner and Henry Wood were appointed tellers, to count in favor, and David V. Boss and John T. Risler against, the resolutions. Wagner and Wood reported three hundred and sixty-four for them, and Ross and Risler twenty-three against them.

There being no other businees, the meeting then adjourned.

Delaware, N. J., May 17th, 1864.

JOHN T. SERGEANT, *Moderator*. 30

Attest. A. B. RITTENHOUSE, *Town clerk*.

I do hereby certify that the foregoing is a true copy of the proceedings of a special town meeting, held in the township of Delaware, in the county of Hunterdon, on the seventeenth day of May, eighteen hundred and sixty-four.

Given under my hand, May 23d, 1864.

ANDREW B. RITTENHOUSE, *Town clerk*.

No. 2.

NOTICE.—Notice is hereby given that a special town meeting will be held at the house of George W. Comly, in Sergeantsville, in the township of Delaware, in the county of Hunterdon, on Tuesday, the 17th day of May, instant, at 11 o'clock A. M., for the purpose of raising money for relieving the inhabitants of the said township of Delaware from the burthen of a draft.

By order of the township committee.

ANDREW B. RITTENHOUSE, *Town clerk.*

10 Delaware, N. J., May 6th, 1864.

No. 1.

State of New Jersey, *ss.*—Albertus K. Wagner, of the county of Hunterdon, in said state, being duly sworn according to law, on his oath says—that he is a freeholder and taxpayer in the township of Delaware, in said county, and that he resides in said township; that on the sixth day of May, last past, a notice, of which the annexed paper, marked No. 1, is a copy, was set up in said township by Andrew B. Rittenhouse, town clerk of said township, and that on the 20 seventeenth day of May, last past, in pursuance of said notice, a town meeting was held in said township, at which the resolutions hereto annexed, marked No. 2, were adopted; that the copy of the proceedings of said town meeting, hereto annexed, were procured by this deponent from Andrew B. Rittenhouse, town clerk.

And this deponent further saith, that James S. Reed, the assessor of said township of Delaware, in obedience to the resolutions of said town meeting, and under color of a special act of the legislature of the State of New Jersey, en- 30 titled "An act to authorize the township of Delaware, in the county of Hunterdon, to raise money by taxation to relieve the inhabitants of said township from the burthen of a draft," approved March 25th, 1864, but not in compliance therewith, made an assessment against the persons, property, and estate of the taxpayers of said township to raise the sum of thirty-one thousand dollars, directed to be assessed and raised by said resolutions.

And this deponent further says, that the said assessor has delivered said assessment, or a duplicate thereof, to David

Jackson, the collector of said township, and that the said collector has notified this deponent that the tax assessed against him under said resolutions, and under color of said special act, is one hundred and fifty-six dollars and thirty-seven cents, and has demanded payment thereof.

And this deponent further says, that he has been informed that most of the taxpayers have been notified of the amount of tax assessed against them under said resolutions, and that payment thereof has been demanded, and that notices were set up in said township, signed by said David Jackson, collector, on or about the first day of June, instant, stating that the tax assessed under said resolutions was due, and that all persons against whom any tax is assessed who shall neglect or refuse to pay the same for the space of three weeks from the first day of June, instant, will be returned as delinquents to a justice of the peace.

And this deponent further says, that under said resolutions the said collector, and the committee appointed at said meeting to act with him, can only pay or apply the tax assessed under said resolutions to the payment of exemptions of the persons drafted; that no part of said tax can be paid to a person drafted who is willing to enter the military service of the United States himself, or to assist him in procuring a substitute to enter the service in his place and stead, and that the said David Jackson, collector, when he demanded payment of the tax assessed against this deponent under said resolutions, informed this deponent that no part of this tax would be paid or given to any person drafted who was willing to enter the military service of the United States, or to a person drafted who procured a substitute to enter the service in his place and stead.

And this deponent further says, that he has been informed, and believes that the said David Jackson, collector, and the committee appointed to act with him, have borrowed the sum of thirty-one thousand dollars; that he was so informed by the said David Jackson, and that said money was borrowed for the purposes specified in the resolutions adopted at said town meeting.

And this deponent further says, that Peter O. Holcombe, Ferdinand S. Holcombe, Elisha E. Holcombe, William L.

Hoppock, Joseph Lair, jun., John Finney, Dennis V. L. Schenck, Hiram Moore, John F. Shepherd, Daniel Poulson, Elias Holcombe, John Sharp, George Hoppock, William C. Veghte, William Bonham, Cornelius Q. Higgins, Henry F. Quick, John Gordon, senior, John W. Reading, Green Sergeant, Asa Moore, Manuel H. Green, Wilson B. Rittenhouse, Wilson Hunt, Rufus Runkle, John Y. Runkle, Lewis H. Lawshe, Horatio Runkle, James J. Fisher, Jacob S. Van Marter, George W. Sharp, Eden Hunt, William L. Hoppock,
10 jun., William R. Allen, John F. S. Smith, John Green, sen., Joseph Housel, Silas Huffman, Samuel Higgins, John B. Fisher, Joseph Haines, Charles Green, Morgan R. Cox, Jacob R. Lawshe, William Fisher, sen., Gideon Moore, Cornelius Q. Fisher, George W. Runk, James Wilson, Joseph Reading, Issachar Hoagland, and William H. Moore are residents and taxpayers in said township, and as such have been assessed for the payment of said tax, and are desirous of being relieved from the payment of the same as an unlawful tax, and for that purpose have united with this de-
20 ponent to prosecute a writ of *certiorari* out of the Supreme Court, or to take such other measures as may be necessary to relieve themselves from the payment of this unlawful imposition.

ALBERTUS K. WAGNER.

Sworn and subscribed, this 17th day of June, A. D. 1864, before me.

JOS. H. HOUGH, *M. C. C.*

New Jersey Supreme Court.

JUNE 17TH—JUNE TERM, 1864.

The State—*ex rel.*, Albertus K. Wagner *et al.* *vs.* David Jackson, collector of taxes in the township of Delaware, in the county of Hunterdon.	*Certiorari. In matter of tax.*

On reading and filing the affidavit of Albertus K. Wagner, 10 it is ordered that a *certiorari* do issue, directed to David Jackson, collector, &c., as above stated, requiring him to return into this court the assessments made in said township of Delaware upon the persons, property, and estate of Albertus K. Wagner, Peter O. Holcombe, Ferdinand S. Holcombe, Elisha E. Holcombe, William L. Hoppock, Joseph Lair, jun., John Finney, Dennis V. L. Schenck, Hiram Moore, John F. Shepherd, Daniel Poulson, Elias Holcombe, John Sharp, George Hoppock, William C. Veghte, William Bonham, Cornelius Q. Higgins, Henry F. Quick, John Gordon, 20 sen., John W. Reading, Green Sergeant, Asa Moore, Manuel H. Green, Wilson B. Rittenhouse, Wilson Hunt, Rufus Runkle, John Y. Runkle, Lewis H. Lawshe, Horatio Runkle, James J. Fisher, Jacob S. Van Marter, George W. Sharp, Eden Hunt, William L. Hoppock, jun., William R. Allen, John F. S. Smith, John Green, sen., Joseph Housel, Silas Huffman, Samuel Higgins, John B. Fisher, Joseph Haines, Charles Green, Morgan R. Cox, Jacob R. Lawshe, William Fisher, sen., Gideon Moore, Cornelius Q. Fisher, George W. Runk, James Wilson, Joseph Reading, Issachar Hoagland, 30 and William H. Moore, in assessing the tax ordered and directed to be assessed and raised by a town meeting held in the said township of Delaware, on the seventeenth day of May, A. D. eighteen hundred and sixty-four, and the duplicate thereof in his hands, with all things touching and con-

cerning the same. And it is further ordered, that upon service of said writ of *certiorari* upon the said David Jackson, collector, &c., as aforesaid, all proceedings in regard to the collection of the said several assessments and taxes be stayed by the said David Jackson until the further order of this court.

On motion of A. V. VAN FLEET, *Att'y of relators.*

New Jersey Supreme Court.

JUNE 28TH—JUNE TERM, 1864.

10 The State—*ex rel.*, Albertus K. Wagner, *et al.*
vs.
David Jackson, collector, &c., of the township of Delaware, in the county of Hunterdon.

On certiorari.

In matter of tax.

A *certiorari* having been allowed in this case, it is ordered that the parties have leave to take affidavits, to be read on the hearing of the same.

On motion of A. V. VAN FLEET, *Att'y of relators.*

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20 State of New Jersey, *ss.*—The State of New Jersey to David Jackson, collector of taxes for the township of Delaware, in the county of Hunterdon, and State of New Jersey, greeting:

We being willing, for certain reasons, to be certified of the assessments made in said township of Delaware, upon the persons, property, and estate of Albertus K. Wagner, Peter O. Holcombe, Ferdinand S. Holcombe, Elisha E. Holcombe, William L. Hoppock, Joseph Lair, jun., John Finney, Dennis V. L. Schenck, Hiram Moore, John F. Shep-
30 herd, Daniel Poulson, Elias Holcombe, John Sharp, George Hoppock, William C. Veghte, William Bonham, Cornelius

Q. Higgins, Henry F. Quick, John Gordon, sen., John W. Reading, Green Sergeant, Asa Moore, Manuel H. Green, Wilson B. Rittenhouse, Wilson Hunt, Rufus Runkle, John Y. Runkle, Lewis H. Lawshe, Horatio Runkle, James J. Fisher, Jacob S. Van Marter, George W. Sharp, Eden Hunt, William L. Hoppock, jun., William R. Allen, John F. S. Smith, John Green, sen., Joseph Housel, Silas Huffman, Samuel Higgins, John B. Fisher, Joseph Haines, Charles Green, Morgan R. Cox, Jacob R. Lawshe, William Fisher, sen., Gideon Moore, Cornelius Q. Fisher, George W. Runk, 10 James Wilson, Joseph Reading, Issachar Hoagland, and William H. Moore, in assessing the tax ordered and directed to be assessed and raised by a town meeting held in the said township of Delaware, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of the duplicate thereof in your hands, and also of the proceedings thereon, do command you, that the said assessment and duplicate thereof, with all things touching and concerning the same, you certify and send to our Justices of our Supreme Court of Judicature, at Trenton, distinctly 20 and plainly under your hand and seal, on the thirtieth day of June, instant, together with this our writ, that therein may be done what of right and according to the laws and constitution of this state ought to be done.

Witness Mercer Beasley, Esq., Chief Justice of our said court, at Trenton aforesaid, the seventeenth day of June, in the year of our Lord one thousand eight hundred and sixty-four.

CHAS. P. SMITH, *Cl'k.*

A. V. VAN FLEET, *Att'y of relators.* 30

Allowed in open court.

M. BEASLEY, *Ch. Justice.*

"I do hereby send to the Honorable the Justices of the Supreme Court of New Jersey the several assessments and duplicate thereof, as within I am commanded, as by my return, hereto annexed under my hand and seal, will more fully appear.

DAVID JACKSON, *Collector.* [L. S.]"

Reasons for Reversal.

[Filed July 7, 1864.]

And the said relators, by A. V. Van Fleet, their attorney, pray that the assessment made in the township of Delaware, in the county of Hunterdon, upon the persons, property, and estates of the relators in the above stated cause, in assessing the tax ordered and directed to be assessed and raised by a town meeting held in the said township of Delaware, on the seventeenth day of May, in the year of our Lord one thou-
10 sand eight hundred and sixty-four, with all things touching and concerning the same, may be set aside, reversed, and made null and void for the following reasons:

First. Because the law under which the said town meeting of the seventeenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, was held, and under which said tax was assessed, was and is unconstitutional and void.

Second. Because the proceedings of said town meeting were not in conformity to the act of the legislature under
20 which said meeting was called and held.

Third. Because the proceedings of said town meeting were unlawful and contrary to public policy.

Fourth. Because the act of the legislature, entitled "An act to authorize the township of Delaware, in the county of Hunterdon, to raise money by taxation to relieve the inhabitants of said township from the burthen of a draft," approved March 25th, 1864, and the proceedings of said town meeting under color of said act, were designed and intended to obstruct, impede, retard, and control the operation and
30 execution of the act of congress, entitled "An act for enrolling and calling out the national forces and for other purposes," commonly called the enrollment act, and to defeat the object and purpose of said act of congress.

Fifth. Because the burthen and charge sought and intended to be imposed upon the said relators and their property by said assessments is not a tax.

Sixth. Because said assessments are unjust and erroneous,

some of the said relators having been assessed at a greater *per centum* to the hundred dollars than others.

Seventh. Because said assessments are illegal, in that they were made to raise money by a general tax to discharge the personal liability of such persons as were already drafted in said township of Delaware.

Eighth. Because said assessments are illegal, in that they were made to raise money by a general tax upon the taxable inhabitants and property of said township for the benefit of a few. 10

Ninth. Because said act, entitled "An act to authorize the township of Delaware, in the county of Hunterdon, to raise money by taxation to relieve the inhabitants of said township from the burthen of a draft," the proceedings of the town meeting of the seventeenth day of May, 1864, the assessments made pursuant to the order and direction of said town meeting, and all matters and things touching and concerning the same, are in divers other respects and particulars wrong, erroneous, unjust, and unlawful.

A. V. VAN FLEET, *Att'y of relators.* 20

Depositions.

[Filed October 22, 1864.]

Depositions taken before me, at the city of Trenton, this eighteenth day of October, A. D. 1864, *in the presence of Abraham V. Van Fleet and Augustus G. Richey, esq's, on the part of the relators, and Peter D. Vroom, esq., on part of the defendants, on notice duly acknowledged.*

J. WILSON, *Sup. Court com'r.*

Andrew B. Rittenhouse, a witness called on the part of the relators, being duly sworn, on his oath saith—I am town 30 clerk of the township of Delaware, in the county of Hunterdon; I have held that office for four or five years last past and longer. I have the town book of the township of Delaware with me; that book contains the record of the pro-

ceedings of a special town meeting held in that township on the seventeenth day of May last. [Witness is here asked to refer to that book, and thereupon refers to the book, and has it open before him.] I now have before me, in that book, the record of the proceedings of that meeting, and it is in the following words: "The following are the proceedings of a special town meeting, held on the 17th of May, 1864, at the house of George W. Comly, in Sergeantsville, in the township of Delaware, agreeably to the direction of
10 the township committee, in accordance with a special act of the legislature, approved March 25th, 1864, between the hours of eleven and twelve o'clock. The meeting was called to order by A. B. Rittenhouse, town clerk, and John T. Sergeant was elected moderator. The seventh section of the law regulating town meetings was read by the clerk, and a certified copy of the act was produced and read by the clerk. Evidence was then produced to show that the notices required by said act had been lawfully set up, when the following resolutions were offered by Isaac S. Crammer:

20 *Resolved*, That the sum of thirty-one thousand dollars shall be raised by assessment and taxation, in accordance with the requirements of a special act of the legislature, approved March the 25th, 1864, for the purpose of enabling us to raise this tax.

Resolved, That the sum so ordered to be raised, or such part thereof as shall come into the hands of the collector, shall be applied by him to the payment of the commutation money for the exemption from the draft of such persons as shall be drafted and accepted for the township of Delaware
30 at the ensuing draft—the one now ordered.

Resolved, That Mahlon Smith, Garret S. Bellis, and Henry Wood be and they are hereby appointed a committee to advise with the collector in reference to the disbursement of said moneys, and that the collector, while acting under their advice and instruction, shall be held harmless.

Resolved, That the township collector and the committee hereby appointed shall be and are hereby authorized to borrow, on the faith of the inhabitants of the township, all or any part of the above named sum of money, if the same is
40 wanted before it can be assessed and collected.

The resolutions were read by the clerk, when a vote was taken on them. A. K. Wagner and Henry Wood were appointed tellers, to count in favor, and David B. Boss and John T. Risler against the resolutions. Wagner and Wood reported three hundred and sixty-four for them, and Boss and Risler twenty-three against them.

There being no other business, the meeting then adjourned.

May 17th, 1864.

(Signed) JOHN T. SERGEANT, *Moderator.* 10

Attest. A. B. RITTENHOUSE, *Town clerk.*"

That is the way I have got it as a true record of the proceedings of that town meeting.

The notices of the town meeting were set up; I did not set them all up; I set part of them up; and the persons that set the others up, I have their affidavits that they set them up; there were more than ten notices set up I think, that is I wrote more than ten notices; we were particular to have ten notices up ten days before the meeting; I do not remember how many of the notices I set up myself—it is 20 some time ago; I do not know anything about the setting up of the rest of the notices, except what the affidavits state; I don't know that I can tell who set up the other notices; I think Ely Kitchen put up some of them; I think that was the case, but am not positive; my impression is that the assessor of that township made an assessment upon the taxpayers of that township in pursuance of the proceedings of that town meeting—I understood that that was the case. James S. Reed was the assessor of the township at that time; David Jackson was then the collector of the township. Prior 30 to this town meeting, I don't know that Delaware township ever offered a bounty for volunteers—not as a township—but individuals made up some money for the nine months' men. I know I paid something myself. I can't answer what was the amount of the bounty so raised for the nine months' men; my impression is that it did not amount to forty dollars a man—between thirty and forty dollars I think.

I have with me the original resolutions which were offered at that special town meeting. (Witness here produces a paper). These are the original resolutions. (Marked *Exhibit* 40

No. 1, *ex parte plaintiffs in certiorari*). The town book, before referred to by witness, and produced by him, is here marked *Exhibit No.* 2, *ex parte plaintiff.*

Being cross-examined on part of defendant, the witness says—I did not hear any objection made at the time of the town meeting on account of notices not having been set up.

A. B. RITTENHOUSE.

Sworn and subscribed, this 18th October, 1864, before me.

J. WILSON, *Sup. Court com'r.*

10 *James S. Reed*, a witness called on the part of the plaintiff, being duly sworn, on his oath saith—I am now, and in May last was the assessor of the township of Delaware, Hunterdon county. I made an assessment against the taxable inhabitants of that township, in pursuance of the directions of the town meeting held in that township on the seventeenth day of May last. I have the duplicate of that assessment here. (Witness here produces a small book, and says)—this is the duplicate. (The book is here marked *Exhibit No.* 3, *ex parte plaintiff*). I made an assessment upon that dupli-
20 cate against each of the relators or plaintiffs in this case. (Counsel of plaintiff here reads over the names of the relators). I made an assessment on that duplicate against each of those persons as taxpayers in the township of Delaware. That assessment against the plaintiffs was made in order to raise the thirty-one thousand dollars ordered to be raised at that town meeting. I assessed against the taxpayers more than thirty-one thousand dollars; I assessed the sum of thirty-one thousand seven hundred and seventy-six dollars and ninety-nine cents; I assessed the seven hundred
30 and seventy-six dollars and ninety-nine cents by the directions of the act and of the committee likewise—I refer to the special committee that was appointed for the purpose. I assessed one dollar and seventy cents to the hundred dollars; I assessed seven dollars and seventy-five cents, as a poll-tax, on each single man, and three dollars and eighty-eight cents, as poll-tax, upon every other white male inhabitant over twenty-one years of age, besides single men; of the plaintiffs in *certiorari* the following were then single men, to wit, Gideon Moore, George W. Runk, Rufus Runkle, and William

N. Runkle. I also assessed William C. Veghte as a single man, and also Clarkson Hunt—assessed them with a poll-tax; they were both married on the 17th May, 1864, and before that time, and they were also married men when this tax was levied. I assessed them with a poll-tax as single men, from the fact that I was to levy this tax from the former assessment made, and they were both single men when that former assessment was made; I made this assessment from the lists as they appeared on the duplicate of the previous year, that is they appeared on the last duplicate made before 10 that special town meeting—that is the duplicate of the year eighteen hundred and sixty-three. The fact is I made no new assessment; I levied the tax from the assessment already made. I can't give the particular day when I levied that tax, but I did it within ten days after that town meeting. I delivered the duplicate to the collector on the twenty-eighth day of May, eighteen hundred and sixty-four.

Being cross-examined, the witness says—It is usual, in making an assessment, to make an addition to the amount ordered to be raised, in order to meet expenses and losses 20 and other contingencies; it has always been the custom I believe—it has as far as I know. The seven hundred and seventy-six dollars and ninety-nine cents was assessed to meet expenses and contingencies and losses.

Being further examined in chief, witness says—

Question. Was not the thirty-one thousand dollars more than sufficient to pay the commutation of every person drafted in your township at that time? [Question objected to.]

Answer. I hardly know how to answer that question; I don't know the number of men drafted. 30

Question. Was not the quota of your township, under that call, one hundred and one? [Objected to.]

Answer. I am not positive about that—but I think that that was the number.

JAMES S. REED.

Sworn and subscribed this 18th day of October, 1864.

J. WILSON, *Sup. Court com'r.*

[Mr. Vroom being called into the Court of Chancery, now withdrew, and the examination proceeded.]

David Jackson, a witness called on the part of the plaintiff, being duly sworn, on his oath saith—I am collector of Delaware township, Hunterdon county—this is my second year in that office. The quota of men of that township, under the call next before the last, was, I believe, one hundred and one; it was so stated in the papers I saw. The men were not drafted in our township on the day the special town meeting was held; I think the men were drafted a day or two after that town meeting was held. (Being shown *Exhibit No.* 3, *ex parte plaintiff*, the witness says)—This is the duplicate delivered to me by the assessor—it contains an assessment of the tax ordered to be raised by the special town meeting held on seventeenth May last. After I received this duplicate, I went to work delivering the tax notices to different individuals, of the tax assessed, &c. I proceeded to give the notices, and those that chose to pay, I took the money of course, as is usually done; I did not give any bond as collector, except the bond that I gave in the spring when I was re-elected at the town meeting. I wont be positive for what sum that bond was given, but it strikes me that it was twenty thousand dollars.

DAVID JACKSON.

Sworn and subscribed the 18th of October, 1864, before me.

J. WILSON, *Sup. Court com'r.*

Albertus K. Wagner, a witness called on the part of the plaintiffs, being duly sworn, on his oath saith—I am a resident of the township of Delaware, Hunterdon county, and a taxpayer there. I am one of the prosecutors of the *certiorari* in this case. The number or quota of men, of the township of Delaware, ordered at the time this special town meeting was held, was one hundred and one, I believe—so I always understood. The collector, when he came to serve the tax notice on me, came up to me and told me that he had a tax notice for me, and handed it to me, and then was about walking away, and I told him to hold on a minute, that I wanted to talk with him a little; he stopped, and I then asked him if any one that was drafted, and procured a substitute, was entitled to any of this money, and he said no—

that that was not the intention of the town meeting. And he was about to walk on again, and I asked him to halt once more, that I was not quite through. I asked him how they made out in getting the money, and he said they had got some of it out of the banks and some out of individuals; I don't remember whether he said that they had got the whole or a part of it, or the greater part of it; nothing else was said—that ended our conversation. I forget when that conversation took place, but it was a short time after the special town meeting was held—think it was twelve or fifteen days 10 after—could tell if I was at home.

ALBERTUS K. WAGNER.

Sworn and subscribed, this 18th October, 1864, before me.

J. WILSON, *Sup. Court com'r.*

New Jersey Supreme Court.

MARCH 8TH—FEBRUARY TERM, 1865.

David Jackson, collector of taxes for the township of Delaware, in the county of Hunterdon, *ads.* The State—Albertus K. Wagner, et al., prosecutors.	*On certiorari In matter of tax.* 20

The court, having heard counsel in this matter, examined the assessments against the prosecutors, and considered the reasons assigned and filed, and the testimony taken and read to the court, and deeming said assessments to have been legally and properly made, except as to the poll-tax of $3.88 assessed against William C. Veghte and Clarkson Hunt, who it appears were married men, and not liable to a poll-tax, it is ordered that in all things (except as above excepted) the 30 said assessments mentioned in the return of said *certiorari* against the said prosecutors be affirmed, with costs to be taxed.

On motion of B. VAN SYCKEL, *Att'y of def't.*

Writ of error allowed. Ordered that clerk make return thereto according to law.

On motion of A. V. VAN FLEET, *Att'y of pros'rs.*

Supreme Court.

The State—Wagner and others, prosecutors, *vs.* Jackson, collector of taxes of the township of Delaware.	*On certiorari.*

ARGUED BEFORE CHIEF JUSTICE AND JUDGES VAN DYKE AND ELMER.

Opinion of Judge Elmer.

10 The taxes complained of by the prosecutors of this *certiorari* were ordered to be assessed by the vote of a special meeting of the inhabitants of the township of Delaware, in the county of Hunterdon, held May 17th, 1864, by virtue of a special act of the legislature, approved March 25th, 1864. *Acts of* 1864, *p.* 509. This act authorizes the said inhabitants to raise, by assessments on the polls and taxable property in said township, such sum as those present and voting at such town meeting should decide to be necessary and proper, not less than two hundred and twenty-five voting for the same, 20 for the purpose of relieving the inhabitants of said township from the burthen of a draft; which tax, when collected, was by the said act required to be paid out in such manner as should have been directed by the said town meeting.

A town meeting, duly held as prescribed by the act, at which more than the required number voted, resolved that the sum of thirty-one thousand dollars should be raised, and that the same, or such part as should come into the hands of the collector, should be applied to the payment of the commutation money for the exemption from the draft of such 30 persons as should be drafted and accepted for the township of Delaware at the ensuing draft, the one now ordered.

It was insisted, by the counsel for the prosecutors, that this act of the legislature, or if not the act itself, the use made of it by the town meeting, was so directly in conflict with the purpose and object of the act of the congress of the United States, entitled "An act for enrolling and calling out

the national forces and for other purposes," approved March 3d, 1863, as to render the whole proceeding unconstitutional and void.

By the provisions of this act, all the able bodied citizens of the United States, as well as certain foreigners, except as specially exempted, are required to be enrolled; so that whenever it may be necessary to call out the national forces for military service, the president is authorized to assign to each district the number of men to be furnished. The mode of drafting is prescribed, and the persons drafted are required to be notified to appear at a designated rendezvous to report for duty. Any person drafted may furnish an acceptable substitute, or he may pay to such person as the secretary of war may authorize to receive it, such sum, not exceeding three hundred dollars, as the secretary may determine, for the procuration of such substitute.

It is because the resolution of the town meeting made provision for carrying into effect one of the means for raising national forces designated by the law of congress, and took no notice of the others, that it was insisted to be so directly in conflict with the law, as to be for that reason unconstitutional and void. But there is nothing contained in that law which discloses any preference for one mode of proceeding over the other. Every drafted man reporting for duty is expressly authorized to furnish a substitute, or to pay a specified sum to enable the government itself to procure one. Is the man who does either of the two things left to his option guilty of opposing or thwarting the object of the law? And if not, is the friend who aids him to do so guilty of any wrong? What the most loyal citizen may innocently do, or what his friends may aid him in doing, certainly cannot become disloyal because it has the sanction of a town meeting or of the legislature.

The great object of the law of congress undoubtedly was to raise men to compose an army, and not to raise money. But it is plainly apparent on the face of the law, that congress expected that besides obtaining men by means of a draft, and by placing the drafted men directly in the ranks, or by obliging them to procure substitutes, they might also obtain them, by requiring every drafted man who preferred

such a course to pay a specified sum, to be applied by the government itself in procuring a substitute. It was urged in argument, as a sufficient answer to this view of the subject, that if all the drafted men of a district paid the commutation, as seemed to be intended by the resolution objected to, it would follow that no men would be obtained, and that the governmeut would be left without a soldier for its protection, and the nation surrendered into the power of those who are warring for its destruction. This argument assumes that we are wiser than congress. That body, including the president, who approved the law, believed that the sum of three hundred dollars paid by each drafted man unwilling to serve in person, or unable or unwilling to pay more for a substitute, would enable the government itself to procure the needful substitutes; or, at all events, that it was wiser to do without the soldiers, rather than to make the burthen heavier than the people were prepared to bear. Can the legislature or the town meeting be held to have obstructed their action by adopting the same opinion? If it turned out that both were mistaken, it surely cannot be assumed that either was guilty of anything wrong or unconstitutional.

But it by no means follows, as the argument so strenuously assumed, that if every drafted man paid the commutation money, the requisite number of substitutes would not be obtained. The draft fell only upon a portion of those actually enrolled, so that others upon whom it did not fall, or who perchance were not subject to enrollment, large numbers of whom, it is well known, were actually received as substitutes, might have been procured; and even those actually drafted might have been willing to serve in the character of substitutes upon receiving the commutation money. If in point of fact it turned out otherwise, it does not follow that the act of congress or the resolution of the town meeting are therefore to be condemned. If the three hundred dollars prescribed in the law failed to produce as many substitutes as were desired, it may have been and probably was occasioned by the substitutes procured in all the loyal states, and in almost every district of those states, by the much larger bounties provided for by voluntary contributions of money or by taxes authorized by laws, the constitutionality of which has not been questioned.

The statute book of this state shows that more than one hundred laws were enacted at the same session of our legislature, authorizing various districts to raise money and to incur debts for the payment of bounties to volunteers, who were received by the government as substitutes for the men required to be drafted. And it is a part of the history of our people, and much to their honor, that in every state, and in almost every city, county, and township which remains loyal to the government of the Union, large sums of money have been raised and large debts incurred, generally by virtue of special authority from state legislation, for the same praiseworthy object. These proceedings have been universally and justly approved as patriotic and wise; and yet it might be very plausibly insisted that they were in direct hostility to this and other laws of the United States. They undoubtedly raised the price of substitutes beyond the limit contemplated in these laws, and enlistments in the army and navy were rendered difficult, if not impossible, and they tended to exhaust the resources of the people. It is indeed beyond question that the best means of raising an army, or of arranging the details of a draft, or the procurement of volunteers or substitutes, are subjects of great difficulty, which continue to tax to the utmost the wisdom of the ablest statesmen. What at one time may be deemed the measure best adapted to obtain the men to compose our national forces, at another time, and under other circumstances, may appear directly to oppose and thwart that all important object. In view of this uncertainty, it must be a plain and wilful conflict with the measures adopted by the general government that will justify us in deciding that a tax in express terms authorized by the state legislature is unconstitutional, and cannot therefore be collected.

It was also insisted that the money required to be paid by the prosecutors as taxes was simply money taken from one citizen to pay the debt or duty owed by another, and that such a law is in opposition to the fundamental principles of our state government, and therefore void. This objection, if sound, applies to all those laws, before mentioned, authorizing the imposition of taxes to pay bounties to volunteers. These volunteers were procured after the draft had

been ordered, for the purpose of relieving the inhabitants of the districts procuring them from the burthen about to be imposed on them, and were directly credited to that object. The volunteers were paid heavy bounties to save the men actually drafted, or who were liable to be drafted, from being obliged to perform the duty of serving as soldiers or paying for substitutes. Every dollar raised from persons exempt from such a draft went as directly to pay the debt or duty of the man drafted or liable to be drafted as did the taxes now complained of.

The constitution of New Jersey vests the legislative power in a senate and general assembly, without undertaking to define in what that power consists; differing essentially in that respect from the constitution of the United States, which intending to confer not general, but only specific, although within their sphere supreme powers, enu mrates what the powers are, and expressly provides that the powers not delegated to the United States by the constitution, nor prohibited by it to the states respectively or th people. The power of taxation is beyond a doubt a legislative power, and except so far as it is restrained by the constitution of the United States, is in this state without regulation or limit.

It may be, however, safely admitted, that the power of taking one man's property, and vesting it in another, is in no just sense a legislative power; and that a law which attempted to do this under the name of levying taxes would be wholly unauthorized and void. But before a tax expressly authorized by law can be held to be of this character, it must clearly appear that it could not have been intended for any governmental purpose.

Doubts have sometimes been expressed whether the state can impose taxes, and expend the money thus raised in carrying into effect objects intrusted to the general government, which has ample powers of its own to fulfil its duties. From the first adoption of the constitution of the United States, the practice has been to do this; and the beneficial result of such a practice has never been more conspicuous than upon this recent occasion, when a great rebellion has taxed the utmost powers of all the governments to suppress

it. So closely, indeed, are the separate governments of the states united to the government of the Union, that it is impossible to say when and to what extent the well being and prosperity of the citizens of any particular state may greatly depend upon the laws of that state which are intended to be in aid of the laws of congress. The state is prohibited by the constitution of the United States from keeping troops or ships of war in time of peace; but in a time of war with a foreign nation, or of war produced by a rebellion like that still in progress, the state may maintain an army and engage in the war. As this may be done directly, it may undoubtedly be done indirectly by military aid to the general government. To a large extent this aid has already been afforded by this as well as the other loyal states, and must continue to be afforded. This is done in part by imposing taxes to defray the expense of bounties to volunteers and substitutes, and to increase the pay of the national forces composed of citizens of this state. It is true that every such volunteer might be required to serve without any bounty, or even without any pay, and in a certain sense, every citizen owes this duty to the government that protects him. There is, however, no similarity between a tax raised to take money from one man merely that it may be paid to another, and one raised to compensate a volunteer or a drafted man for performing a duty which might have been exacted of him by a government sufficiently despotic without compensation.

Bounties to volunteers and pay to soldiers and their families are certainly legitimate expenses of the government. Whether the bounties were paid directly to the volunteers or substitutes, or to officers authorized to procure them at a price limited by the government, can make no difference. Nor is it needful to inquire what motives may have induced those intrusted with the legislative power to authorize such expenditures. It may have been the belief that volunteers or substitutes would make better soldiers than drafted men, or it may have been some other motives equally prudent. That motives of a very powerful character were in operation, was evinced by the general adoption of the practice, and by the fact that it was approved by the government and by all

classes of the people throughout the loyal states. Much doubt as to the propriety of thus interfering was felt at the commencement of the proceedings; but these doubts soon gave way to the urgent necessity of the case, and heavy taxes and heavy debts were incurred, by general consent, for the purpose of relieving the inhabitants of most of the districts of the burthen of a draft. It is very obvious now, with the knowledge we have of the circumstances attending a draft and the procuring of substitutes, that if the legisla-
10 ture or the town meeting had required a sufficient sum of money to be raised to secure the requisite number of volunteers or substitutes, whatever might have been the cost, they would have shown more zeal to promote the object in view of raising an army; but a lack of intelligent zeal to promote this object, although quite sufficient to have justified negative votes in the town meeting, is not a sufficient ground for declaring a tax raised in a manner authorized by the law illegal and void.

Besides these objections, there were several other reasons
20 insisted on for setting aside these taxes, in whole or in part, which remain to be noticed. It was urged that a larger sum was raised than was authorized by the town meeting. Upon referring, however, to the law, it appears that the third section expressly authorizes not only the sum ordered by the meeting to be assessed, but also "the expense incident to the assessing, collecting, and paying out the same." It is not shown that the sum of $776.96, added to the sum ordered by the meeting, was an unreasonable amount for the purposes indicated. The case therefore differs essentially from
30 the tax held to be illegal in the case of the *State* v. *Bently*, 3 *Zab.* 532.

Again, it was objected that the sum assessed to the polls was not what the act requires. The language is that there should be assessed and raised, by a poll-tax on all the married men of fifty cents each, and on all unmarried men of one dollar each, on each and every four thousand dollars so assessed on said township, and in the same proportion on all fractions of the said four thousand dollars. In my opinion this language may be fairly interpreted, as the assessor evi-
40 dently understood it, to apply only to the assessment before

mentioned in the act, which was to be of the money ordered by the meeting. At all events the difference between the two modes of calculation affects the assessments upon property, in respect to which the objection is made, in so slight a degree that I do not think we are called upon to interfere for this reason.

Another reason was, that the assessor testified that he "made no new assessment." It is evident, however, he means only that he did not apply personally to every taxpayer in the usual manner of making a new assessment. 10 This he was not required to do, the act directing him to make this assessment according to the valuation as made at the regular assessment next before such special town meeting. No evidence has been produced, nor has it been suggested by counsel, that any of the prosecutors or other persons have been assessed for property they do not own, or that any property or polls have been omitted which ought to have been assessed.

It appears, however, that two of the prosecutors, *viz.* William C. Veghte and Clarkson Hunt, were assessed as single 20 men, although they had become married men before the assessment was made. This I think was erroneous, so that the tax imposed on them should be reduced in the sum of three dollars and eighty-eight cents each, and in all other respects the assessment should be affirmed.

Chief Justice concurred. Vandyke, J., read dissenting opinion.

Opinion of Justice Van Dyke.

By the 13th section of the act of congress of the 3d of March, 1863, for the enrolling and calling out of the national forces, it is provided that any person who may be drafted into the service, instead of going himself, furnish an acceptable substitute to take his place in the draft, or if he shall not see fit to go into the service himself or to furnish a substitute, he has the privilege of paying to the government, in lieu thereof, a sum of money not exceeding three hundred
10 dollars.

In view of one of the drafts that had been ordered by the Government, the inhabitants of the township of Delaware, in the county of Hunterdon, obtained an act of the legislature authorizing them to raise money by taxation to relieve the inhabitants of the said township from the burthen of a draft. This act was approved on the 25th day of March, 1864, and it seems to authorize the clerk, when in the opinion of the township committee it shall become necessary to hold a public town meeting for the purpose specified in the
20 act, to call such meeting by setting up notices, &c.

It is made lawful, also, for the inhabitants of the township, at such meeting, to raise, by assessment on the polls and taxable property, such sum as a majority of those present and voting shall decide to be necessary and proper for the purpose of relieving the inhabitants from the burthen of a draft, and specifying the mode and manner in which it is to be done. The collector of such taxes is required to pay out the money thus raised for the purpose of relieving the inhabitants from the burthen of a draft, in such manner as
30 shall have been directed by the said town meeting.

The special town meeting seems to have been called and held, and it ordered and directed that the sum of $31,000 should be raised by assessment and taxation, and it further ordered and directed that the money so to be raised should be applied by the collector to the payment of the commutation money, for the exemption from the draft then pending, of such persons as should be drafted and accepted for that township, that is to say, the meeting resolved and directed

that if a person should be drafted and was willing to go into the service of the country, the township would give him nothing. If he were willing to furnish an acceptable substitute, the township would give him nothing to aid him in so doing, but if he should prefer to do neither, but chose to remain at home and do nothing, the township would pay $300 to enable him to do so.

The assessor added to the sum of $31,000 ordered to be raised the sum of $776.99, to cover expenses, losses, &c., and assessed the whole amount against the inhabitants of 10 the township, the plaintiff among the rest, as the quota of that township was 101 men the amount assessed was $1476.99, more than was necessary to pay the sum of $300 for each man which the township was called on to furnish. To get this assessment set aside is the object of this *certiorari*. Various reasons have been offered in support of this application.

First, it is said that this act of the legislature is unconstitutional and void for this reason, that it is in contravention of the act of congress on the subject. I am not able to see 20 anything in the act of the legislature itself which can bear such an interpretation. It seems to be very well understood that the township had no authority to raise money for such a purpose, especially at a special town meeting, without the aid of the legislature for that purpose. The object and intent of the act, so far as we can gather from its terms, seems to have been to enable the township to relieve such of its citizens as should be the subjects of the draft from the burthens that such draft would impose upon them. This might have been done, I think, either by offering bounties for 30 volunteers, or to such as should go into the service if drafted, or to aid the drafted men in procuring substitutes, or in assisting them to pay their commutation money. It is easy to see how the act of the legislature could have been carried into execution in a manner greatly to have aided the government in the object which it had in view, which was to raise troops to enable it to suppress the rebellion. I can see nothing in the act which is in conflict with this great object, or that shows any unfaithfulness or disloyalty to the general government; and yet it was quite possible for the township 40

so to use the authority conferred by the act, and perhaps they did so, as to embarrass rather than to aid the government without any violation of the letter of the act of congress. Did they do so?

It is insisted that, even if the act of the legislature be valid, still that the action of the township under that law made the whole proceeding nugatory, for the reason that it was intended to embarrass, and did in fact embarrass rather than aid the government in its military operations. We have already seen that the money to be raised was to be appropriated according to the directions of the special town meeting, and we have also seen that those directions were to use it in paying the commutation money, as it is called, for the men that should be drafted, and for nothing else. We can only ascertain the intention of the township from what it actually did; but whatever that intention may have been, it seems impossible not to perceive that the course pursued was the most unfavorable one towards the government that could well have been adopted; and yet I am not able to see, as between the government and the township, only why it could not lawfully do precisely what it undertook to do. The township, as such, was not bound to do anything to aid the government. Its claim was not upon the township, but upon the men of the township. Each man in the township that was or might be drafted had an undoubted right, according to the act of congress, to pay his commutation money of $300, and to do nothing else; and who can say that the township, if its people had been unanimous on the subject, had not the right to aid their drafted men in doing so. This act of congress was manifestly intended to be as lenient as possible, for it said in substance to drafted and acceptable men, that if they preferred not to go themselves, they might furnish substitutes on such favorable terms as they might arrange for; but to save them from what might possibly have been an extortionate imposition as to price, it further said, you need not be compelled to pay for substitutes, in any event, over $300; and if you cannot procure them for that sum, we will take the money and procure the substitutes ourselves. The township saw fit to direct and confine its bounty to this last alternative; and although it seems very

much like a premium offered to keep their drafted men at home, still it is an alternative clearly presented by the act of congress, which I think the township, as between it and the government, have clearly the right to adopt.

But had the township the right, even under the authority of the act of the legislature, to adopt this course as against its own unwilling and resisting citizens? Was it not, as to them, a total perversion of the spirit and meaning of that act, and wholly different from what has occurred anywhere else? If the relief contempated by the act had been extended alike to all their drafted men, whether they went into the service themselves, or whether they furnished substitutes, or whether they chose to use the money to commute with the government, all the money raised, if it were the right sum, would certainly have been used, not only in relieving all their drafted men, but also in aiding the government according to the spirit and letter of the act of congress, as well as that of the act of the legislature. But we can readily see that if the drafted men had all chosen to accept their lot, and go into the service, either from motives of patriotism or from the considerations of compensation otherwise offered, no part of the money raised would have been used, none of the men on whom the burthen of the draft rested would have been relieved, while the object of the act of the legislature, which was to relieve the drafted men, would have been wholly frustrated, and the money raised for nothing. So if they had furnished substitutes. We have no knowledge of what actually occurred under this assessment; but we are not at liberty to assume that all the men of a township who might be drafted would be so selfish or unpatriotic as to prefer their own indolence and ease in preference to their country's welfare, or to accept the offered temptation to be recognised in the community as either sluggards or cowards in the hour of the nation's peril. We are bound, I think, to assume directly to the contrary, for the township then determined to raise $31,000 for a purpose for which, in the nature of things, it might never be needed, and if needed at all only to a limited extent, and which might only partially relieve the drafted men from the burthen of such draft, was the adoption of a principle neither contemplated

nor authorized by the act of the legislature. The object of the act doubtless was to relieve in some way *all* the men on whom the burthen should fall, which ever course they might, under the act of congress, see fit to adopt; but the determination of the township was to relieve only one class, or the class only which should adopt but one of the alternatives presented by congress. This I think was wrong, and it was done in defiance of the will of a portion of its people. I think they are entitled to be relieved against it. The town-
10 ship had no right to tax its unwilling people to raise this large sum of money to relieve those on whom the burthen should fall, and thus impose on its acceptance an inflexible condition degrading in itself, one which substantially compelled the township to furnish no men at all, and thus expose it to another draft, from which by the sending of its proper quota it would have been relieved.

It is further insisted that this assessment is illegal, for the reason that the assessor assessed over $700 more than was ordered by the township meeting. This was for the purpose
20 of meeting the expenses incident to the assessing, collecting, and paying out of the money. The assessor is expressly ordered to do this by the act of the legislature, and I do not see that he was wrong in so doing.

It also appears that the township directed the raising of $700 more than was necessary to pay the commutations of all the men which the township was liable to furnish, and the assessment is alleged to be erroneous for this reason; but this probably arose from not having at the time of the meeting the exact number of men that would be needed.
30 If this excess of money had been a very large one, it would seem as if the proceedings ought to be arrested on account of it; but as it was not, and as the quotas which the states, counties, and townships are liable to furnish shift very much between the ordering and the completion of these drafts, and as the quota for that township, for aught that appears, may have been reduced after the meeting was held, it would be under the circumstances, I think, enforcing too rigid a rule to require perfect exactness in such a matter.

It further appears from the case, that the assessor made no
40 new assessments against the taxpayers and property of the

township, as they then existed, by way of raising this money, but simply took and adopted the assessment precisely as it stood and had been made the year before. He seems to have been under the impression that he was required to do so, because he says, when speaking of certain of the assessments against some of the plaintiffs, that he made them so from the fact that he was to levy this tax from the former assessment made. In this he was mistaken. He was authorized by the act to adopt the same valuation as that of the year before, but nothing more. In all other respects the assessment was to be made in the same way as the regular annual assessments are made. This he did not do, and according to his own evidence made no effort to do, except only by a resort to the former assessment. This, it seems to me, was exceedingly irregular and unlawful, and is a practice which this court should not sustain, for if it was right in this case, I do not see why it would not be right at all times and in all cases. We cannot shut our eyes to the fact, that between these two assessments a number of taxable persons have died and others arrived at a taxable age. Some had probably removed from the township, and others removed into it, old corporations may have expired, and new ones been organized. Some persons deemed wealthy at the time of the first assessment may have been in poverty at the time of the second, and others who may have had no taxable property at the time of the first, may have had a large amount at the time of the second assessment; persons that were single on the one occasion, may have been married at the other, and *vice versa*. So, too, assessments that were erroneous on the former occasion, by being either too high or too low, should have been corrected on the latter, if possible. But all these and other important considerations seem to have been overlooked and disregarded. The direction therefore contained in the act of the legislature, that the money ordered to be raised should be assessed upon the polls and upon the real and personal property of the taxpayers of the township has not been lawfully complied with.

It appears also, as a matter of fact, that some of these plaintiffs were assessed as single men who were married even at the time of assessment; and as no provision is made for

an appeal, and as no session of the commissioners of appeals seems to have been held, and as no one was apprized by the assessor as to how he was assessed, no mode of correction was furnished. These last named assessments therefore being erroneous, should be set aside, or at least corrected. But as the whole assessment was, for the reasons given, as I think, unlawful, it should be set aside so far as the plaintiffs in *certiorari* are concerned.

Court of Errors and Appeals in the last resort in all causes, of the term of March, in the year of our Lord one thousand eight hundred and sixty-five.

The State of New Jersey, on the relation of Albertus K. Wagner *et al.*, *vs.* David Jackson, collector of taxes of the township of Delaware, &c.	*In matter of tax.* *Assignment of errors.*

Afterwards, that is to say on the fourteenth day of March, in the year of our Lord one thousand eight hundred and sixty-five, before the said court comes the State of New Jersey, on the relation of the said Albertus K. Wagner and others, by A. V. Van Fleet, their attorney, and say—that in the record and proceedings aforesaid, and in giving of judgment, there is manifest error in this: that the Supreme Court of Judicature of the State of New Jersey held the said assessment of taxes against the relators removed into said court by the said relators for review was valid, lawful, and constitutional; whereas, by the law of the land, said assessment of taxes was invalid, unlawful, and unconstitutional.

And there is also error in this, that the said Supreme Court held that the said assessment of taxes against the said relators was lawful; whereas said assessment of taxes against said relators was unlawful.

And there is also error in this, that the said Supreme Court held that the act of the legislature of the State of New Jersey, entitled "An act to authorize the township of Delaware, in the county of Hunterdon, to raise money by taxation to relieve the inhabitants of said township from the burthen of a draft," approved March twenty-fifth, one thousand eight hundred and sixty-four, under which, or under color of which said assessment of taxes was made, was constitutional and valid, and that the proceedings of a town meeting, held in the said township under said act, were regular and lawful 10 whereas the said act is unconstitutional and invalid, and the proceedings of said town meeting were irregular and unlawful.

And there is also error in this, that the said Supreme Court held that the proceedings of a certain town meeting, held in the said township of Delaware on the seventeenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, at which the said assessment of taxes was ordered to be made, were valid, legal, and regular, and not designed or intended to obstruct, impede, or in any way con- 20 trol, and did not obstruct, impede, or in any way control the execution and enforcement of the act of congress entitled "An act for enrolling and calling out the national forces and for other purposes," and the supplements thereto; whereas the proceedings of said town meeting were invalid, illegal, and irregular, and the said proceedings were designed and intended to obstruct, impede, and control the execution and enforcement of the said act of congress and supplements thereto, and did obstruct, impede, and control the execution and enforcement of said act of congress. 30

And there is also error in this, that the said Supreme Court held that the said assessment of taxes was made, pursuant to the order and direction of said town meeting, for a lawful and proper purpose; whereas, by the law of the land, said assessment was made for an improper and unlawful purpose, said assessment being made to raise money by taxation for the private, personal, and exclusive benefit of a few persons of said township, and to release a few persons of said township from the performance of a personal and individual duty. 40

And there is also error in this, that the said Supreme Court held that the assessor of the said township of Delaware had made a legal and sufficient assessment of taxes under said act; whereas the said assessor had made no assessment whatever.

And there is also error in this, that the said Supreme Court held that the use made of the said act of the legislature of the State of New Jersey, by the people and officers of the said township of Delaware, was warranted by the act
10 itself, and conformable to the letter and spirit thereof; whereas the use made of it was unwarranted, and the proceedings under it were in violation of both its spirit and letter.

And there is also error in this, that the said Supreme Court held that the assessment made against the said relators was for a lawful tax; whereas said assessment was not for a lawful tax, the money raised by such assessment not being intended for any public use but for private benefit.

And there is also error in this, that the said Supreme
20 Court held that the money raised by said assessment could, under the resolutions adopted at the town meeting of the seventeenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, be paid to such drafted men as should enter the military service of the United States; whereas, by the express language of said resolutions, such money could only be used in the payment of the commutation money for the exemption from the draft of such persons as were drafted, and any person drafted and entering the military service of the United States could not and
30 would not have received one cent of the money assessed against and upon the taxpayers of said township.

And the said plaintiffs in error pray that the judgment aforesaid, for the errors aforesaid and for other errors in the said record and proceedings, may be reversed, annulled, and altogether for nothing holden, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

A. V. VAN FLEET,
Att'y and of counsel with the plaintiffs in error.

Court of Errors and Appeals of the State of New Jersey.

David Jackson, collector of taxes of the township of Delaware, &c., *ads.* The State of New Jersey, on the relation of Albertus K. Wagner *et al.*	*In matter of taxes.* *Joinder in error.*

And hereupon the said David Jackson, collector, &c., by B. & C. Van Syckel, his attorneys, comes and says, that 10 there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid; and he prays that the said Court of Errors and Appeals 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.

B. & C. VAN SYCKEL,
Att'ys of defendants in error.