

Filed
7th March 1860

THE
MAYOR & CITY COUNCIL OF BALTIMORE,

vs.

THE STATE OF MARYLAND,
ON THE RELATION OF THE BOARD OF POLICE OF THE
CITY OF BALTIMORE.

In the Court of Appeals.

Statement and Brief on the part of the Relators.

This petition for a Mandamus was filed in the Superior Court of Baltimore City, by the Board of Police of the City of Baltimore, under the special provisions of the Act creating it, and sets out the organization of the Board, the qualification of the four Commissioners who, with the Mayor of Baltimore, compose it, (that functionary having declined to qualify,) and that notice has been given to the Marshal and Deputy Marshal of Police in the City of Baltimore, as required by the Act, so as to bring the whole existing Police force in the city under the exclusive management and control of the Board. It further states that the Board, for the Police so under its exclusive management and control, desires and needs immediately, the use of the Fire Alarm and Police Telegraph in said city, and of all the Station Houses, Watch Boxes, Arms, Accoutrements, and other accommodations and things provided by the city for the City Police, as fully and to the same extent as the same at the passage of the Act were used by or for the City Police, and had applied to the Mayor and City Council for such use, which had been refused; and thereupon the petition prays a Manda-

mus to the Mayor and City Council of Baltimore, to furnish and allow the use so demanded and refused.

The Mayor and City Council filed their answer to this petition, and therein set out at great length their objections in point of law to the granting of the Mandamus. As these must necessarily appear in the Brief on the part of the City, so far as they are still relied on, it is not deemed necessary to repeat them here, further than to say that they take the ground that the Act is unconstitutional in some of its provisions, and that others of them are unusual and dangerous, incompatible with civil liberty and repugnant to natural justice. The only fact averred in the answer which it is thought material to specify is, that the Fire Alarm and other things, the use of which is sought by the Board, are declared to belong absolutely to the Corporation as its property, having been purchased by the Corporation for corporate uses and purposes, at the cost of nearly \$30,000, paid therefor out of the proper funds of said Corporation.

It is admitted that the Commissioners were appointed, have organized and qualified, and that they gave the notice as charged to the Heads of the City Police, and that the demand and refusal of the Fire Alarm, &c., took place as stated in the petition.

The Court below (Martin, J.,) after hearing, granted the Mandamus, and assigned in writing its reasons for so doing, which will be found in the Record. (pp. 19 to 35.)

The Mayor and City Council thereupon took an appeal from the order granting the Mandamus, and upon that appeal the case now comes up.

Before proceeding to lay down the propositions proposed to be argued on behalf of the relators, in support of the judgment of the Court below, it ought to be stated, that while the Act referred to in the petition creates the Board of Police, and defines some of its powers and duties, other duties and powers have been conferred on it by another law passed at the same session, regulating elections in the City of Baltimore. This latter act is grounded on the 6th section of the 10th article of the Constitution, which authorizes the

Legislature to regulate by law all matters relating to the judges, time, place and manner of holding elections and making the returns thereof, provided that the tenure and term of office and the day of election shall not be affected thereby. Accordingly, without touching the term or tenure of office, or the day of election, further than to declare between what hours the polls shall remain open, the Act last alluded to directs the time, place and manner of holding elections in Baltimore. Among other things it requires the Board of Police to divide the Wards into election precincts, to appoint judges of election and their clerks, and provides that no election in the city, whether Federal, State or Municipal, shall be valid, unless held under and in conformity to it, and under and subject to the provisions of the Act referred to in the petition establishing a Permanent Police in the City of Baltimore, and under and subject to the control and command, as to all Police purposes, of the Board of Police of the City of Baltimore, (the relators.)

All the questions at issue range themselves under two heads—the first, relating to the authority of the Legislature to create a Board of Board of Police, the members of which shall be appointed by itself, and the second relating to the powers conferred on the Board.

A. As regards the ability of the General Assembly to create and fill an office, it is sufficient to refer to two articles of the Constitution, viz:

Art. 2, sec. 11. "He (the Governor) shall nominate, and by and with the advice and consent of the Senate, appoint all civil and military officers of the State, whose appointment or election is not herein provided for, *unless a different mode of appointment be prescribed by the law creating the office.*"

Art. 3, sec. 24. "No Senator or Delegate, after qualifying as such, shall, during the term for which he was elected, be eligible to any office which shall have been created, or the salary or profits of which shall have been increased during such term, or shall, during said term, hold any office or re-

ceive the salary or profits of any office *under the appointment of the Executive or Legislature.*"

Davis *vs.* The State, 7 Md., 161.

judgment, warrants, to assume the control and command of all conservators of the peace in the City of Baltimore.

5. The provision authorizing the Board to call out the militia in the city, to aid them in preventing threatened disorder or opposition to the laws, or in suppressing insurrection, riot or disorder on election days, and at other times, which is supposed to trench on the Governor's prerogative.

These objections exhaust the Constitutional impediments in the way of the act, but it is suggested that for other reasons it ought to be pronounced a nullity, in law.

6. These other reasons are: That the Board are declared to be authorities of the city, and the city is made responsible for their defaults, while having no control over them.

7. That the city is burdened with the expenses of the Board and the Police, and bound to raise the necessary funds, without power to supervise the estimates, and coerced to discharge this duty, by being inhibited from collecting its ordinary taxes, unless it collects at the same time the Police tax, and subjected in case it fails to meet the Board's requisitions for moneys, to the issue of certificates, in its name, which may be pledged or disposed of by the Board, and shall be receivable in payment of city taxes.

8. That the disability to hold office, under the city or the act, which is visited, by the terms of the latter, upon a forcible resistance to its provisions, is a disfranchisement unknown to the Constitution, and contrary to its spirit.

9. That the Fire Alarm and other things, of which the use is sought by the Mandamus, belong to the city, and were purchased and paid for by it, out of its proper funds, for corporate uses and purposes, and that the exclusive use of all these things is necessary to the discharge of the duties of the corporation.

Before proceeding to notice, in detail, these several suggestions, it may be proper to advert to the fact, that they all proceed upon the hypothesis, that the Police powers delegated to the Board, are restricted in their exercise to the limits of the city; but it will be observed, by referring to

In case they have reason to believe that any persons within the city intend to commit any breach of the peace, or violation of law or order, beyond the city limits, upon the Chesapeake Bay, or other place on land or water in this State, it shall be their duty to cause such persons to be followed, and to suppress or prevent the meditated outrage and arrest the offender, delivering him, if the crime be committed, to the proper authority for trial and punishment; and they may also arrest, in any part of the State, any person charged with the commission of crime in the city of Baltimore, and against whom criminal process shall have issued. Their authority, therefore, is not a merely local authority, but in the cases specified, extends over the whole State; and for this, therefore, if for no other reason, it is impossible to identify the Board with the mere local police functionaries of Baltimore.

The People vs. Draper, 25 Barbour 374.

S. C. in error, 15 New-York 543.

The first objection is, that the provisions of the act infringe the Constitutional powers of the Mayor and City Council of Baltimore, which was vested with all power of legislation, for city purposes, according to the wants and wishes of the inhabitants of the said city; which city government thus erected, endowed and established, is fully recognized and essentially confirmed to the city and its inhabitants, by the existing Constitution; and that the act renders it a different corporation, with different powers

from those recognized and confirmed to the city by the existing Constitution.

That the Mayor and City Council of Baltimore is recognized as a municipal corporation, in the Constitution, is undoubtedly the fact, for it is twice mentioned in the 19th section of the 4th article of the Constitution, and elsewhere in the instrument, and power is given it to appoint constables, in case of vacancies, and also to provide for an additional temporary police to preserve the public peace. But it by no means follows that such a recognition with such a grant of power, amounts to an incorporation of the city by the Convention, with all its powers as then conferred by statute. The construction is just the reverse. By the grant of two specified powers, and no more, the Constitution excludes the notion of any other than the specified powers being derived from that instrument; and such a construction is fortified by its other provisions. The analogous governing bodies in the counties—the County Commissioners, though so named by the Constitution, and deriving from it a permanent existence, are yet, by the 8th section of the 7th article, made wholly dependent on the Legislature for their powers and duties; and the 37th article of the Bill of Rights, while confirming, in terms, to the city of Annapolis, its rights agreeably to its charter, makes them expressly subject to alterations by the Legislature.

That the mere mention of the city, elsewhere in the Constitution as an existing local division of the State, for judicial and representative purposes, *ipso facto* embodies its charter in the fundamental law, so as to place the whole beyond the pale of legislative power, is a proposition which, it is presumed, cannot be seriously advanced.

Breese 120, 121.

4 Scammon 273.

12 La. 515.

2. The second objection is, that the Act puts under the control of the Board the existing Police of the City of Baltimore, consisting of a Marshal and other officers and men, which existing Police is affirmed to be an additional temporary Police, appointed by the City authorities, under the last clause of the 19th Section of the IV article.

It is conceded that the section referred to authorizes the City to provide by ordinance for the creation and government of an additional temporary Police for the preservation of the public peace, but it is denied that the existing Police in the city, of which the Board are authorized to assume the control, is such an additional temporary Police, or that it was created under the section alluded to. The character of the force must be determined by the Municipal Legislation which called it into existence. This Police was first created by an ordinance approved 1st January, 1857, and entitled, "an ordinance to establish a Police for the City of Baltimore." Its first section abolishes the existing watch and Police systems, and repeals all ordinances for the establishment and regulation of the same, and with this introduction it proceeds to create and organize a new Police system, consisting of 44 officers of various grades, and 363 men including Turnkeys and Detectives, all of them to hold their appointments for a year, and provided with batons, revolvers and muskets at the City's expense. The permanent character of this force is further illustrated by the 21st section, which authorizes the Mayor to call out and arm any number of special Police which he may deem necessary to preserve the peace, but declares expressly that such special Police Officers shall be retained no longer than is necessary for the protection of the peace on the occasion. The special Police, when appointed under this section, constitute a Police additional to that created by the other sections, and are temporary, because employed only to preserve the peace in an emergency, and ceasing when peace is restored, while the force described in the other sections has no temporary function to fulfil, but is required by the 2nd section to do duty by day and night, throughout the year, and to enforce the

ordinances and acts of assembly, and exercise the general functions of a Police organization.

Such was the character of the ordinary City Police, as impressed on it by the ordinance of 1st January, 1857, creating it, and superseding all others, and such it continued to be at the time of the passage of the Police Act, by virtue of the Revised Ordinance of the 11th June, 1858, in force when that Act passed. This second and subsisting ordinance is likewise entitled "an Ordinance to establish a Police for the City of Baltimore," and is in fact, with some immaterial variations, a re-enactment of the Ordinance of the 1st January, 1857, containing among other things, a repetition in terms of the 21st section of that ordinance, which provides a Special Police for extraordinary occasions, with no other power than that of preserving the peace.

Nothing therefore can be plainer than that the Police force in the City of Baltimore, at the time of the passage of the Police Act, consisting as described in the answer of 44 officers and 363 privates was a permanent, as contradistinguished from an additional temporary Police. It was never called by the latter name until it was so called in the answer in this case, and the language of the Ordinances which brought it into existence and continued it, establishes the erroneusness of this new appellation.

The objection therefore under consideration, which puts the unconstitutionality of the Act on the ground of its giving the Board control of the present Police, because such Police is a temporary and additional Police, fails, for the reason that the Police is not a temporary and additional force, but a permanent Police, and so not created or upheld by virtue of the 19th section of the 4th article.

3. The third objection is that the Act empowers the Board of Police to appoint a permanent Police in Baltimore, though the Constitution has determined that the permanent Police of that City shall consist of its Justices of the Peace and Constables. The 19th Section of the 4th article of the Constitution is relied on for this view.

It is said that the last clause of that Section authorizes the Mayor and City Council of Baltimore to provide by Ordinance for the appointment of a temporary additional Police to preserve the public peace, and as an additional Police implies another Police to which the former is to be additional, it is contended that we must look to the prior part of the Section for the permanent body which is thus to be temporarily added to. The prior part of the Section provides for the election of Justices and Constables, and they are consequently assumed to have been, in the contemplation of the Convention, a permanent Police, the existence of which, derived from such a source, is supposed to negative the power of the Legislature to create, or authorize the creation of any other permanent Police.

If the Justices and Constables were meant to be a permanent Police, they are not so declared in terms, and to supply this defect, it is urged that they are declared to be conservators of the Peace, and that these words make them Policemen. But this language clothes them with no character which they did not possess without it, and merely expressed what was implied by the offices they hold. Both Justices and Constables, as well as Judges and the Sheriff are, *virtute officii*, conservators of the Peace.

2 Hawkins Plea of the Crown, 43, 44, 45.

These words therefore accomplish nothing that was not accomplished by the mere mention of Justices and Constables, and add consequently nothing to the force of those terms. If they could be supposed to do it and their use were attended with the consequences claimed, it would follow, from the 6th Section of the same article which makes the Judges of the Court of Appeals, of the Circuit Courts and of the City of Baltimore, conservators of the Peace, that all these high functionaries are Policemen as well as the Baltimore Justices and Constables.

All that the present Constitution has done in regard to Justices and Constables is simply to change the mode of their appointment, leaving their powers and duties (though not the jurisdiction of the former,) to the discretion of the Legislature. How can it be possibly inferred from such dealing with these officers, that the Constitution meant to invest them with a character which they never possessed before, and which is absolutely inconsistent with the discharge of their Constitutional functions?

The title of the 4th article and its first section are the best guides to its true construction. Its title shows that it dealt with the Judiciary department, and its first section declares that the Judicial power shall be vested in a Court of Appeals, in Circuit Courts, in such Courts for the City of Baltimore as may be hereinafter prescribed, and in Justices of the Peace. The scope of the whole article is the creation of Judicial Tribunals and their accessories in the administration of justice. Without Clerks, or Registers, and Sheriffs, the Courts would be unfurnished for the discharge of their functions, and so these ministerial officers are given them, while for the same reason, in the section which provides for the election of Justices, they are supplied with their necessary attendants in the Constables. In 1 Burns' Justice, title Constable, section 5, it is said, "It hath always been holden that a Constable is the proper officer to a Justice of the Peace, and bound to execute his warrants."

The general intent and purpose of the article, therefore, in which the section about Justices and Constables is found, defines the construction to be given it, and negatives any

and many other instances, his duty is rather to prevent crime and trespasses on person and property, than to punish or bring to justice the one or the other.

And this view of the essential character of a Police shows how impossible it is to consider the Constitution as having regarded in such a light the Justices and Constables. The 19th section groups them together, and if the word "additional" in its last clause refers to them it refers to both of them, as must be conceded, and is in point of fact conceded by the answer. Now unreasonable as it would be to adopt a construction even in regard to Constables, which would make it their duty, instead of attending on the Justice for the execution of his warrants, to be constantly engaged by day and night in other functions, consuming all their time, it becomes wholly indefensible when applied to the Justices. How would it be possible for them to fulfil their judicial duty, if obliged to be always absent from their place of business in the discharge of the multitudinous avocations of a Policeman? The Acts of 1847, ch. 77, sec. 10, and 1854, ch. 225, imposing upon them office hours and official localities, would, by such a construction, be absolutely set at naught.

If then the 19th section of the 4th article creates no police, what force was in the view of the Convention when, in the conclusion of that article, it authorized the Mayor and City Council of Baltimore to create an additional police? To what police was the one so created to be additional?

The answer is a very plain one. It was to be additional to the Permanent Police then existing in the City of Baltimore, under merely Legislative sanction, and it was to be temporary, because its existence was only authorized for a single purpose, viz: that of preserving the public peace in case of necessity, and therefore necessarily limited to the duration of occasional outbreaks which interrupted or threatened to interrupt the public quiet.

At the time of the adoption of the Constitution there was in existence in the City of Baltimore a force known by the name of the City Police, created long before and

actually subsisting at that time under a revised Ordinance of 1850, (Rev. Ord. of 1850, p. 98.) The provisions of this Ordinance establish that the force organized by it was a Permanent Police in the proper and ordinary acceptation of that term, clothed with Police powers and duties. The authority to make it was derived from the Act of November, 1812, chapter 194, which empowered the Mayor to appoint during pleasure not less than 25 nor more than 100 bailiffs to aid in preserving the peace, maintaining the laws and advancing the police and good government of the city, and from the Act of 1817, ch. 158, sec. 3, which enlarged the powers of those bailiffs and gave their appointment to the Mayor and Councils.

Under these acts, Ordinances were passed, from time to time, until in 1838, (Rev. Ord. 1838, p. 112,) an Ordinance was enacted, entitled "An Ordinance for the appointment of a High Constable, City Bailiffs and for other purposes," in which the force was organized under a head denominated "Chief of Police," and the force itself called by the name of the City Police. This Ordinance was followed by the Ordinance revised in 1850, and above referred to, which like its predecessor embodies, arranges and describes the Bailiffs of the City as the Police of Baltimore.

Nothing, therefore, can be clearer than the existence in 1850 of a Permanent Police in the City of Baltimore, dating from the Act of 1812, and charged with the performance of ordinary Police duties. It would be a waste of time to do more than say that it must have been to this force that the *police* provided for in the close of the 19th section of the 4th article was to be *additional*. A further ground for the same conclusion is furnished by the fact that during the whole period, from 1812 to 1850, Justices and Constables were discharging their duties, civil and criminal, in the City of Baltimore; were conservators of the peace, as now, and were quite distinct from the Police; never known by that appellation, nor clothed with the powers, or burthened with the duties belonging to such a force. This simple and obvious construction of the Constitution is sanc-

tioned by the subsequent conduct of all parties concerned. The Legislature, by the Act of 1853, ch. 46, entitled "An Act to provide for the better security of life and property in the City of Baltimore, by increasing and arming the Police thereof," repealed, and in repealing, recognized the then continuing force and operation of the Act of 1812, ch. 194, which limited the appointment of City Bailiffs to the num-

aneous constitutional interpretation, and the number of the Justices and Constables then designated has not been enlarged.

If these observations be correct, the construction of the 19th Section of the 4th article of the Constitution is not open to any doubt. But even were it conceded that the construction is doubtful, the result practically would be the same. Nothing short of a clear denial of power to the Legislature, can incapacitate it for performing the function, for which government is mainly instituted—the protection of life and property. Such a denial, may no doubt, be implied as well as expressed, but whether in one shape or the other it must be too plain for controversy.

The People and Draper, 25 Barb 374-15 N. Y. 532.

Presbyterian Church vs. City of N. Y., 5 Cowen 540.

Stuyvesant & Mayor of N. Y. 6 Hill 93.

Dodge & Woolsey, 18 How 356.

Gozler & Corporation of Georgetown, 6 Wheat. 596.

Partridge & Dorsey, 3 H. & G. 322.

Gibbons & Ogden, 9 Wheat 204.

Day vs. The State, 7 Gill 325.

19 Barbour, 83.

Field vs. The People, 2 Scammon 81-95.

Mills vs. Williams 11 Iredell 560, 3.

State vs Dew, Charlton, (Geo.) 432, 9.

Slack & Maysville Road, 13 B. Mon. 22, 3.

Manley vs The State, 7, Md. 147.

9 Watts & Sergeant, 386.

Crane & Meginnis, 1 G. & J. 474.

State vs. B. & O. R. R. Co., 12 G. & Jo. 431.

Shorter & Smith, 9 Geo. 527.

State vs. Waywan, 2 G. & J., 256.

9 Maryland, 328 Buckingham & Davis.

12 Louisiana, 515.

Gordon vs. Mayor of Balto., 5 Gill 236.

Alexander vs. Mayor of Balto., 5 Gill 393 396

Baldwin & Green, 10 Missouri 410.

St. Louis vs. Allen, 13 Missouri 414.

- 11 Louisiana, 370.
 Baugher vs. Nelson, 9 Gill, 305.
 Pratt vs. Allen, 13 Conn., 125.
 Mayor and City Council vs. Balt. & O. R. R. Co., 6 Gill,
 292.
 Ross vs. Whitman, 6 Calif, 364-5.
 Savannah vs. Hessey, 21 Geo. 86.
 East Hartford vs. Hartford Bridge, 10 How 534.
 Hammick & Rowe, 17 Geo. 87 88
 Prigg & State of Penn. 16 Peters 610.
 Martin & Waddell, 16 Peters 411.
 Wright & Wright, 2 Md. 449.
 Chas. River & Warren Bridge, 11 Peters 547.

The following Acts passed since the adoption of the present Constitution shew the exercise by the Legislature of the power to appoint Police Officers in other parts of the State beside the City of Baltimore.

- 1854, chapter 44, section 5.
 1854, chapter 282, section 8.
 1854, chapter 286.
 1854, chapter 294.
 1856, chapter 177.
 1856, chapter 312.
 1858, chapter 73.
 1853, chapter 74.
 1858, chapter 166.
 1858, chapter 373.

And the volume of Public Local Laws adopted at the last Session of the General Assembly, establishes the same point. Sec. pp. 8—11—17—18—35—42—79—278—288—290—301—305—324—335—347—351—353—360—364—376—386—387—402—417—434—441—446—447—458—464—485—489—495—529—538—542—575—584—585—605—630—633—648—658—659—683—693—696—704—716—720—759—782.

The 4th Constitutional objection is to the provision making it the Sheriff's duty to act under the Board in the preservation of the public peace and quiet and to call out the posse if required by them, and enabling the Board, whenever the exigency in their judgment warrants it, to assume the control and command of all conservators of the Peace in the city.

There is no clause in the Constitution giving to any one conservator of the Peace the control of any other, and least of all to the Sheriff, for the 20th Section of the 4th article which mentions the office and provides for filling it, does not describe him as a conservator of the Peace, though that title is conferred on the Judges, Justices and Constables. Yet there can be no doubt that he is a conservator of the Peace, by virtue of his office and the common law, and so are the Judges, Justices and Constables in Baltimore by express designation. The very existence of so numerous a body of functionaries, charged with a single duty and independent of each other, calls for such a regulation as shall cause them to work together in harmony, and nothing in the Constitution forbids such an arrangement, which is emi-

The 5th and last Constitutional objection is that the power vested in the Board to call out the militia in certain cases, is an interference with the Governor's Constitutional prerogative under the 9th section of the 2nd article.

There is nothing in this provision which looks like exclusion of the Executive authority, in regard to the calling out of the militia. Its terms are permissive only; and in other States, where a similar power is lodged in the Executive, it has been the uniform construction that the Legislature is competent to direct in what cases, and by whom the militia, or a part of it, may be ordered on duty.

And such has been always the practical construction, in this State, of the power in question.

The 33d section of Constitution of 1776, gave the Governor "alone the direction of the militia," yet under it acts were passed, making it the duty of subordinate officers to bring their commands into the field, on the requisition of certain civil officers.

1798 ch. 100, sec. 10.

1807 ch. 128, sec. 6.

1813 ch. 19, sec. 2, 4.

1816 ch. 193, sec. 18.

1823 ch. 188, sec. 70.

1834 ch. 251, sec. 57.

1835, ch. 14, sec. 9; ch. 107.

The remaining objections to the act, rather concede that there is no constitutional foundation for them, but that they repose on some higher law.

The 6th objection is to the declaration contained in the 19th section of the act, that the Board shall be considered as one of the city authorities; and it is insisted that the city ought not to be made liable for the defaults of those over whom it has no control.

Upon the assumption of the answer that the Justices and Constables are the permanent Police of the city of Baltimore, and so charged with the preservation, ordinarily, of the public peace, the same state of things exists. The corporation of Baltimore neither appoints nor controls the Justices or the Constables, (except in case of a vacancy in the office of Constable) and the power to create a "temporary" police, exists as well under the act now in controversy, as under the construction assumed on the other side to be the true one.

But the ground of the objection is altogether untenable.

There is no inherent right in the citizens of any particular locality—and certainly none in any municipal corporation—to elect or choose their own functionaries. Their existence, as a separate organization for local purposes, is derived from, and is wholly dependent on, the Legislative will; and that will determines not merely what powers of local government shall be delegated, but to whom the delegation shall be made. In whatever way appointed, the local functionaries represent the citizens of the locality only because the State authorizes them to act for that portion of its citizens. The Board of Police, therefore, within its sphere, is just as much the representative of the people of Baltimore as the corporation.

13 B. Monro, 22, 23.

But were it even otherwise, the question is one of expediency, merely, and therefore not of judicial cognizance.

The 7th objection assails the law, because it calls on the city to raise taxes without giving it a voice in fixing their amount; and contains provisions to coerce obedience to this direction.

With the same propriety the city might demur to collecting the State tax from the citizens of Baltimore, and assert an inherent right to tax, without State authority.

That the taxing power is exclusively in the Legislature, under the Constitution, is undeniable. The 11th section of the Bill of Rights provides that "no aid, charge, tax, burden or fees ought to be rated or levied under any pretence without the consent of the Legislature." It is only by the consent, therefore, of the Legislature that the corporation of Baltimore can levy and collect taxes under the Constitution; and it exercises the power to tax under such limitations and restraints as may be imposed by the Legislature; (Rev. Public Local Code, 257).

13 B. Monro, 25-6-7.

Instances of just such legislation as that complained of, are to be found throughout the Acts of Assembly.

Apr'l, 1782, ch. 39.

1797 ch. 73.

Nov'r, 1796, ch. 68 sec. XIII, (the first City Charter).

1805, ch. 91; 1804, ch. 97.

1816, ch. 193; ch. 218, sec. 2.

- 1817, ch. 142, sec. 5.
 1818, ch. 141, sec. 2.
 1823, ch. 187.
 1834, ch. 151.
 1837, ch. 24.
 1854, ch. 144.
 1856, ch. 280.
 1858, ch. 39, ch. 91.

The 8th objection is to the disfranchisement for City Offices, or offices under the Act, of those who forcibly resist it.

The language of the objection concedes that there is no express provision of the Constitution violated by this provision. It is said to be unknown to that instrument and contrary to its spirit.

As the Constitution does not define the qualifications of those who are to hold Office under the City or Act in question, it is clearly within the power of the Legislature to define those qualifications in any way it pleases.

Thomas vs. Owens, 4 Md. 223.

Barker vs. the People, 3 Conn., 703-6.

The 9th and last objection to the Act is that it requires the City to allow the use of the Fire Alarm and other things which belong to it for the service of the new Police.

There is no allegation that these things were a gift to the City, or conveyed to it or any special trusts. They are averred to belong to it absolutely, and to have been purchased for corporate uses and purposes, and paid for out of the proper funds of the corporation. They were acquired therefore as the ordinary fruits of taxation, by the exercise of powers derived from the State for public purposes, and are consequently in no sense private property. The theory which seeks to make them private property confounds the distinction between public and private corporations. It has been settled in this State, and in the other States, and by the Supreme Court, that municipalities are public corporations, and that in regard to the property acquired by them for public purposes, through public instrumentalities, the Legislature has complete and plenary power of direction and disposition. The claim of the Petition is only to use the property in question, as it is used by the existing Police, (p. 3,) and the concession of the answer, (p. 15,) that it is used by the existing Police, is an admission, that it may be used by the new Police, without destroying or impairing its use for any other necessary corporate purpose.

City vs. Lemon, Co. Appeals, 1838.

Regents vs. Williams, 9 G. & J. 401.

The State vs. B. & O. R. R. Co. 12 G. & J. 440, 3 How 550.

Hartford vs. Hartford, 10 How 535 536.

Mayor &c. vs. Root, 8 Md. 101 102.

Dartmouth College & Woodward, 4 Wheat 660 1.

2 Kents Comm. 275.

3 New Hampshire 530 to 535.

8 New Hampshire 323.

34 New Hampshire 275.

3 Williams (Vt.) 12, 13, 18, 19.

23 Conn. 419.

24 Wendell 69.

3 Hill 539.

- 25 Barbour 366.
21 Pennsylvania 202.
13 Ben. Monroe 26, 33.
17 Georgia 59, 60.
22 Georgia 531, 556.
Dayton vs. N. Orleans, 12 La. An. Rep. 515.
11 Humphries 583.
Breese, 120 121.
4 Scammon 273, 5, 7.
Mills and Williams, 11 Iredell 563.

- 25 Barbour 366.
21 Pennsylvania 202.
13 Ben. Monroe 26, 33.