— 39/1860 — C.L.

In the Superior Court of
Baltimore City
=
The Mayor & City Council of
Baltimore
Box "R." No. 19"
vs
Charles Howard
William H. Gatchell
Charles D. Hinks &
John W. Davis
=
Petition for Mandamus
=
Mr. Sangston,
File this petition and lay
it before his Honor the Judge.
J. Meredith
Wm Price
Wm Schley
Th. J. Alexander

Appeal to Dec
1859

Filed 27th February 1860

To the Honorable ROBERT N. MARTIN,

Judge of the Superior Court of Baltimore City:

The Petition of the Mayor and City Council of Baltimore respectfully shews to your Honor, that long before, and at the time of, the adoption of the existing Constitution of Maryland, the City of Baltimore was a municipal corporation, possessing certain corporate rights, privileges, faculties and powers, and various rights of property, government, &c., as are fully expressed and set forth in the revised public local laws of said State, under Article IV, and Sections 1 to 904, both inclusive, and to which Sections of said Article reference is now made, and it is prayed that such reference may avail, and have the same effect as if every clause in said Sections, material to the present application, were herein fully set forth, and stated as a part of this Petition.

Your Petitioner further states, that at the time of the adoption of the said existing Constitution, the City of Baltimore was divided into twenty different wards, of known, defined, and certain boundaries, and that the limits and boundaries of the said city, in its whole territorial extent, were well known and defined at the time of the adoption of the said existing Constitution.

Your Petitioner further states, that by the provisions of said existing Constitution, the Legislature was authorized to fix the number of Justices of the Peace and Constables, for each ward of the City of Baltimore; and the Justices of the Peace and Constables, when the number thereof should be so fixed as aforesaid, were, by the express provisions of the Constitution, to be elected, for each of said wards, respectively, by the legal and qualified voters of said several wards, respectively; and that the Legislature, in pursuance of the powers so reserved, did,

and approved, and enacted for the very purpose of providing for the creation and government of a temporary additional police, adequate to the preservation of the public peace of said city, there had been appointed one Marshal, one Deputy Marshal, eight Captains, eight Lieutenants, twenty-four Sergeants, three hundred and fifty Police Officers, five Detective Police Officers, and eight Turnkeys; all of whom were duly in office and acting, and qualified to act, at the time of the passage of the Bill passed at the present session of the General Assembly, and hereinafter particularly mentioned; and who are now in office and acting under said appointments, and whose term of office has not expired, and will not expire for some time to come. And your Petitioner further states, that in the judgment of said Mayor and City Council, no further temporary additional police is necessary for the preservation of the public peace of said city. And your Petitioner further states that said ordinances, under which said appointments were made, have not been abrogated, repealed, or altered, or rendered inoperative by any subsequent ordinances of said city. And your Petitioner further states and avers, that the employment in common of the permanent police, or of the additional police, or of both, by the Board of Police, sought to be established by the Bill, hereinafter particularly mentioned, and by the city authorities, even if the same were consistent with the provision of said Bill, would be productive of confusion, collision of authority and conflict of jurisdiction, and be, in actual practice, mischievous in its results.

Your Petitioner further suggests, that whilst, by the provisions of the Constitution, the power is conferred on the Legislature, to fix the number of the *permanent* Police force of the City of Baltimore; yet, the power, and the exclusive power, is conferred on the Mayor and City Council, to provide, by ordinance, from time to time, for the creation and government of such *temporary* additional Police, as the said Mayor and City Council may deem necessary to preserve the public peace.

Your Petitioner further states, that by the provisions of said existing Constitution, two persons are to be duly elected, every

afterwards, by the several Acts of Assembly, of 1852, chapter 274, and 1853, chapter 102, fix the number of Justices of the Peace and of Constables to be elected, for said several wards of said city, by the legal and qualified voters thereof, respectively; as upon reference to said Acts will fully appear.

Your Petitioner further states, that, at an election, held in the several wards of the City of Baltimore, on the second day of November last, in pursuance of the Constitution, and in conformity with the directions of said several Acts of Assembly, the precise number of persons were returned elected as Justices of the Peace, for each of said several wards, respectively, and the precise number of persons were returned elected Constables, for each of said several wards, respectively, as fixed by said several Acts of Assembly; and that all the said persons, so returned elected as Justices of the Peace, and as Constables, respectively, accepted said several offices, respectively; and duly qualified themselves to act, as such, by complying with all the requirements of law, in that behalf; and are now, respectively, acting as such.

Your Petitioner further suggests, that by force of the provisions in that behalf of said Constitution, in case of a vacancy in the office of any one or more of the said Justices of the Peace, power is conferred upon the Governor to fill the said vacancy, until the next regular election of Justices of the Peace, for said several wards respectively; and that in case of a vacancy in the office of Constable, power is conferred on the Mayor and City Council of Baltimore to appoint a person to serve, as Constable, until the next regular election thereafter, for Constables for the several wards of said city.

Your Petitioner further states that apt provision has been made, by valid and existing ordinances of the City of Baltimore, for the establishment and appointment of night-watches, patrols, bailiffs, and other police officers; for arming them, when necessary; and otherwise, for the sufficient and efficient employment and government of an adequate police force for said city.

And your Petitioner states and avers, that in compliance with the exigency of existing ordinances of said city, duly passed

second year, for the office of Sheriff of said city, by the qualified voters of said city; and your Petitioner now states, that, at the general election, held in said city, on the second day of November last, two qualified persons were accordingly elected to said office; the one of whom, having the greatest number of the qualified votes, was, subsequently, duly commissioned by the Governor, and has duly qualified himself to act, as Sheriff, by having given bond, and by having taken the oath of office, as prescribed by law; and is now acting as such Sheriff of said city; and your Petitioner further states, that none of the large common law powers appertaining to the office of Sheriff, had, at the time of the adoption of said existing Constitution, been taken away, or impaired, as respects the said City of Baltimore; nor have said powers been since taken away, or impaired, in any manner; unless the Act of Assembly, hereinafter mentioned, shall avail to do so.

Your Petitioner now states to your Honor, that, by an Act of the General Assembly of Maryland, passed on the second day of February instant, entitled "A Bill to amend the fourth article of the code of public local laws, by amending the thirty-third section of said article, relating to the police and general power of the Mayor and City Council of Baltimore, and repealing the seven hundred and seventy-fourth, seven hundred and seventy-fifth, seven hundred and seventy-sixth, and seven hundred and seventy-seventh sections of said article, relating to the Mayor and City Council, to establish and regulate the same, and inserting in said article, in lieu of the sections so repealed, the following sections, for the purpose of providing a permanent police, for the City of Baltimore"—a copy of which Bill is herewith filed, marked with the letter A—and which your Petitioner prays may be taken and considered as a part of this Petition, in the same manner, and to the same effect, as if the various parts thereof were herein fully and particularly set forth and stated; and your Petitioner respectfully suggests that by the last section of said Act, it is thereby declared, that the same

shall take effect from the day of its passage; so that said Bill, if the same be a valid enactment, is now in force, as a law.

Your Petitioner further suggests, that by the said Act it is declared that a Board of Police should be, and if said Bill be a valid enactment, such Board was thereby established within and for the City of Baltimore, to be entitled the Board of Police of the City of Baltimore, to consist of Four Commissioners, together with the Mayor of said city, for the time being, or whoever may be lawfully acting in that capacity. And your Petitioner further suggests, that in and by said Bill, Charles Howard, William H. Gatchell, Charles D. Hinks and John W. Davis, were named as, and if said Bill be a valid enactment, were thereby appointed, such Commissioners to hold their offices, except as specified in said Act, for the term of four years, and until their respective successors shall have been appointed and qualified; with power, in the case of any vacancy in said Board, to the remaining Commissioners to fill the same, until the appointment and qualification of some person for said vacancy, to be appointed at the next regular session of the Legislature, by the General Assembly, on joint ballot; with provision for continuing the succession in said Board, by appointments to be made by the Legislature in manner as specified and provided in said Bill; and with a further provision that a majority of said Board of Police shall constitute a quorum, and that the failure or refusal of the Mayor, or acting Mayor, of the City of Baltimore, to qualify or act under the said Bill, shall, in no wise, impair the right or duty of the said Commissioners to organize and proceed as provided in and by the said Bill.

Your Petitioner states that it has been informed and believes, that said Charles Howard, William H. Gatchell, Charles D. Hinks and John W. Davis, have accepted the appointment conferred on them by said Bill, and have exercised certain of the powers thereby proposed and intended to be conferred on them, as Police Commissioners; and have assumed to give orders to the existing police force of the city, have demanded from the Mayor possession of the Fire Alarm and Police Telegraph in

said city, and of all Station Houses, Watch Boxes, Arms, Accoutrements, and other accommodations and things provided by the Mayor and City Council of Baltimore, for the use and service of the police created by said Mayor and City Council; and, upon refusal of the city authorities to allow such use, the said Police Commissioners have actually made application for a mandamus, pursuant to the 11th section of said Bill, and which said application is now pending. And your Petitioner further states, that said Charles Howard, William H. Gatchell, Charles D. Hinks and John W. Davis, announce their purpose and intention, and undoubtedly propose and design, unless restrained from so doing, to exercise all and singular the powers intended to be conferred on them as Police Commissioners, by the said Bill.

Your Petitioner is advised that the said Bill is repugnant, in many and serious particulars, to the Constitution of the State of Maryland, to the constitutional rights of the City of Baltimore as a municipality, and in derogation of certain corporate rights, privileges and franchises of your Petitioner, recognized in the Constitution itself, and thereby secured to your Petitioner, as an integral, but distinct, part of the territory of the State, and secured, in like manner, to the citizens of Baltimore as a community, for the regulation and government of the internal affairs of the said city.

And your Petitioner now respectfully proceeds to specify and point out some of the particulars in which such repugnancy, as it respectfully insists, will be found to exist:

1. Whereas, by Article IV, Section I, of the Constitution, it is plainly declared that the whole Judicial power of the State shall be vested in the Court of Appeals, in the several Circuit Courts, in such Courts as should be established, pursuant to said Constitution, for the City of Baltimore, and in Justices of the Peace, to be elected as provided in and by the said Constitution, yet in and by said Bill, of which said paper, marked A, is a copy, said Board of Police is clothed with power and authority, to *try* policemen, to punish them, by *fine*, by forfeiture of pay, *or other-*

wise, as said Board shall adjudge; power being conferred on said Board, in and by said Bill, to make *all* such rules and regulations, not inconsistent with said Bill, for the trial of the police force; and, also, power, as to any person appearing or called before them, to administer oaths or affirmations, and of summoning witnesses, and power, also, to issue process to run, not merely within and throughout the limits of the City of Baltimore, but beyond the city limits, upon the Chesapeake bay, or any river, creek, or other place, on land or water, within the State.

2. Although it is clear, that the power resides in the Legislature, to fix the number of the *permanent* police force of the City of Baltimore; yet, it is equally clear, that all Justices of the Peace, and all Constables, composing such permanent police force, are, by the express provisions of the Constitution, to be *elected*, for the several wards of said city, by the legal and qualified voters of said wards, respectively; and it is also equally clear, that the Mayor and City Council, by the express provisions of the Constitution, are authorized, and, of course, exclusively authorized, to provide, *by Ordinance*, for the creation and government of such *temporary* additional police, as *they* (the said Mayor and City Council) may deem necessary to preserve the public peace. And your Petitioner is advised, and now respectfully insists, that said Bill is repugnant to the provisions, in this behalf, of the said Constitution, in the following particulars, that is to say: *firstly*, for that whilst said Bill does specify the number of which said police force shall consist, upon its first organization by said Board, at three hundred and fifty; yet the same is not fixed as the *permanent* number of such police force, inasmuch as power is expressly conferred on said Board to *reduce* that number, or to *increase* the same to not more than four hundred and fifty, as the experience of said *Board* may warrant; thus conferring, in this respect, upon said Board, the power which the Constitution had conferred on the Legislature;—*secondly*, for that whilst the Justices of the Peace and the Constables, (who were intended, by the provisions of

the Constitution, to compose the permanent police force of said city, whose numbers were to be fixed by the Legislature,) are, by the provisions of the Constitution, to be *elected* for the several wards of said city, by the legal and qualified voters thereof, respectively; yet, in and by said Bill, the police force therein meant and intended, are not to be *elected*, either by the qualified voters of the respective wards, or in any other manner, but are to be *appointed* by the said Board;—*thirdly*, for that whilst, under the Constitution, any temporary additional police is to be provided, by ordinance of the city, and in accordance with the judgment of the Mayor and City Council; yet, by said Bill, the said *Board* is empowered to raise, for extraordinary emergencies, such additional police force as the emergency, in the judgment of said Board, may demand;—thus conferring upon said Board the absolute power of deciding, whether an extraordinary emergency has or has not occurred; and, also, of determining, whether such emergency requires the employment, or does not require the employment, of any additional police force;—*fourthly*, for that whereas, by the election prescribed by the Constitution, the permanent police force are to be elected for the term of *two* years, they are, by said Bill, to be appointed for the term of *five* years, with no qualification as to residence, except citizenship of the United States;—*fifthly*, whereas by the Constitution, not merely the creation, but the *government* of the additional police force is conferred on the Mayor and City Council; yet, by the said Bill, all authority of the Mayor and City Council in the premises is annulled; and the additional police force, actually provided by said city, by its ordinances enacted for that purpose, and duly appointed and acting in pursuance of said ordinances, is, by the said Bill, sought to be placed under the exclusive direction and government of said Board of Police.

3. The Sheriff, elected for the City of Baltimore, as a known peace officer, of ancient and large conservative powers, would (independently of the provisions of said Bill) not only have *the right*, but would be bound by *duty*, to exercise his extra-

ordinary powers in any emergency requiring the assistance of the *posse comitatus;* and the citizens of Baltimore would, under the Constitution, have the right to expect, on proper occasions, the exercise of this power, as one of their securities and safeguards; yet, in and by said Bill, the Sheriff of the City of Baltimore is placed, as if he were in fact a mere policeman, under the authority and control of said Board of Police; *bound*, on the requisition of said Board, to summon the *posse comitatus*, even if, in his judgment, the same should be unnecessary, and to hold and employ the same, according to the directions of said Board; and by necessary implication, is stripped and deprived of any power or authority, either to summon, or employ, the *posse comitatus*, on any occasion or for any purpose, even in the case of an open riot in his presence, unless first required and allowed to do so by the said Board of Police.

4. Whilst the Constitution expressly declares, that all the Judges of the State shall be conservators of the peace, *throughout the State*, and, of course, when corporally present, within the City of Baltimore; yet, the said Bill expressly declares, that *all* conservators of the peace, within the said city, shall act under the control of said Board; and *not otherwise:* thereby depriving the inhabitants of Baltimore of their constitutional right, as one of the guards and securities for personal and other protection, to the intervention of the police force, of Constables, Sheriff, and Justices of the Peace; and also of the Judges of the local Courts, and of the Courts of the several circuits, and of the Court of Appeals, even in cases, where, in the opinion of such conservators of the peace, the occasion might call for such intervention, and where, if interposed, the same, in all human probability, would be preventive of an outrage; *unless*, in virtue of an antecedent direction of said Board;—severe penalties being provided, in this behalf; and, in the case of the Sheriff, if he should assume to act, in virtue of his common law powers, without a previous command of said Board, the penalty is fixed at $5,000!

5. By the Constitution, the very delicate power of calling

out the militia to suppress insurrections, and enforce the execution of the laws, is confided to the Governor of the State: but, by the provisions of said Bill, in case the said Board shall deem it necessary, the said Board may call out such of the military forces, lawfully organized or existing in said City, *as they may see fit*, to aid them in preventing threatened disorder, or opposition to the laws, (of which state of case they are, by necessary implication, to be the sole judges,) or in suppressing insurrections, riot, or disorder on election days, and at all other times, and it is thereby declared to be the duty of said military force, so called out, to obey *such* directions as may be given by said Board, *whenever the exigency or circumstances* may, *in the judgment of said Board*, warrant it.

Having thus, specifically, pointed out certain features of said Bill, which, as your Petitioner is advised, render the same unconstitutional and void; and relying upon all other valid objections to the said Bill, on the ground of its repugnancy to the Constitution, your Petitioner is further advised, and respectfully insists, that said Bill, in other respects, and for other sufficient reasons, ought to be held and pronounced a nullity in law. And your Petitioner suggests, that the powers conferred on said Board are unusual and dangerous, incompatible with civil liberty, and repugnant to natural justice. And your Petitioner suggests, that said Bill declares, that said Police Board shall be deemed and taken to be one of the authorities of said city, in the same manner as if created or appointed by, or under, the Mayor and City Council; and that the said city shall be, in effect, liable for any failure of said Board to discharge the duties and obligations of said city; whilst, at the same time, it is expressly declared, that the Mayor and City Council shall not have control over said Board, or over any officer or policeman appointed thereby. Your Petitioner further suggests, that the object and design of the said Bill was to weaken the authority of the Mayor and City Council, by taking away antecedently existing important legislative powers; and to paralyze the executive arm of said city, by making the whole police force, even the existing

police force, whose offices were conferred upon them by the city authorities, subordinate and subject to said Board; and entirely independent of the city authorities. Your Petitioner further suggests, that power is given to said Board to burden the City of Baltimore with onerous and enormous police expenses, by payment of the salaries allowed to said Commisssioners and their Clerk, and of their Treasurer, Marshal, Deputy Marshal, their Captains, Lieutenants, and Turnkeys, their ordinary and extraordinary policemen, and of the gratuities which they may think proper to allow, as authorized by said Bill; and in payment of the expenses of providing, and maintaining, such offices, and office furniture, *and other things*, (as authorized, in terms, by said Bill,) and of such clerks and subordinates, as they may need; and of the expense of providing and maintaining Station Houses, in the several police Districts, into which they may deem it needful to divide the city, with *all things and attendants* required for the same, (as, in terms, is authorized by said Bill,) and all such other accommodations, as may, in their judgment, be required for the Police. Your Petitioner further suggests, that under the provisions of said Bill, the Mayor and City Council have no power to control, or regulate, the expense of this Police department; for the Bill, in terms, imposes on the Mayor and City Council the mere ministerial duty of assessing and levying, specifically, and without any delay, upon all the assessable property of Baltimore, such amount of money, as may, *according to the estimate of said Board*, be sufficient, clear of all expenses and discounts, to enable the said Board to discharge the various duties imposed on said Board by said Bill; without any power, on the part of the City authorities, to consider the reasonableness of such estimate, or to call for the grounds, on which the same may have been made. And your Petitioner further suggests, that the Bill also contains this extraordinary and coercive provision, that no tax bill, for payment of the necessary ordinary expenses of the city, shall be recoverable, unless such tax bill shall contain a charge for said police tax. And your Petitioner further suggests, that said Bill authorizes the said Police Board

to make requisition, from time to time, upon the Mayor, Register, Comptroller, or other proper disbursing officer of said city, for such sum of money, as the said Board may deem necessary for executing their duties, not exceeding, in any one year, their said estimate for said year; with power to said Board, in case payment is not made, forthwith, in compliance with such requisition, to issue certificates of indebtedness, in the name of the Mayor and City Council, bearing six per cent. interest, payable at not more than twelve month after date; and to raise money on said certificates, by pledging or disposing of the same; and with the further power, in case the estimate of said Board, for any year, shall fall short of the actual disbursements, to issue, pledge, or dispose of certificates of indebtedness, to a further amount, not exceeding, in any one year, an additional amount of thirty thousand dollars.

And your Petitioner further suggests, that said Bill contains a provision, that any officer or servant of the Mayor or City Council, or other person whatever, who shall forcibly resist the execution or enforcement of any of the provisions of said Bill, shall not only be liable to a penalty of $1,000, for each and every offense; but shall, forever thereafter, be disqualified to hold office, under said city, or under said Bill; thus creating a disfranchisement, unknown to the Constitution, and contrary to its spirit.

And your Petitioner further suggests to your Honor, that said Bill contains, in effect, a provision that the Board of Police, therein constituted, shall have the right to the use and service of the Fire Alarm and Police Telegraph, the Station Houses, Watch Boxes, Arms, Accoutrements, and other accommodations provided by the Mayor and City Council of Baltimore, for the use and service of the Police, created by said Mayor and City Council of Baltimore. And your Petitioner here states and avers, that the said Telegraph, Station Houses, Watch Boxes, Arms, Accoutrements, and other accommodations, have been procured by the said city, at a cost of nearly eighty thousand dollars, paid out of the proper funds of your Petitioner, and

belong to your Petitioner, as property, by an absolute right and title. And your Petitioner further states and avers, that said property is indispensably necessary for the use of the said city, for purposes and ends entirely local in their character, and particularly for the additional police of said city; especially so for the efficient operation and management of the paid fire department of said city, as recently established, and as organized and existing as well at the present time as at the time of the passage of said Bill, under which the said Charles Howard, William H. Gatchell, Charles D. Hinks, and John W. Davis claim title as Commissioners of Police. And your Petitioner further states and avers, that the use in common of said property, and especially of said Fire Alarm and Police Telegraph, by the city authorities and the Police of said city, and by said Board of Police and those who may act under their authority, would be productive of inconvenience, confusion and mischief. And for the purpose of shewing that the said last named persons, as such Police Commissioners, claim possession of said property, your Petitioner herewith exhibits the copies of certain letters, marked with the letter B, and which your Petitioner prays may be taken and considered as a part of this Petition.

For all which said reasons, independently of, and in addition to, the constitutional objections to said Bill, your Petitioner is advised that it is oppressive and unjust; and that it is an unwarranted encroachment upon, and interference with, the vested rights of the Mayor and City Council of Baltimore; with the rights of the corporation, as to its government, the administration of its internal affairs, the selection of its own agents and officers, and by the imposition of taxes, the creation of liabilities, and the introduction, within the city, as a city institution, of a a Board of Police, against the will of said city.

Your Petitioner, therefore, prays that the said Act may be declared unconstitutional and void, as well in its character as a repealing Act, as also in its character as an amendatory Act, and also as an enacting Bill, so far as the same, in its construction

or in its operation and effect, would destroy or impair the constitutional and vested rights, liberties, immunities and privileges of the corporation of the City of Baltimore, or interfere with the proper exercise of its corporate faculties and powers; and that the said Commissioners therein named, and the Board of Police, thereby intended to be created, may be restrained, prevented and prohibited by the writ of the State of Maryland of mandamus, from exercising, or assuming to exercise, within the territorial limits of the City of Baltimore, any of the powers, or the authority or jurisdiction, intended to be conferred on said Commissioners, or on said Board, by the said Act, so far as the exercise of any such powers, or authority or jurisdiction, would destroy, usurp, encroach upon, or impair any of the constitutional and vested rights, liberties, immunities and privileges, faculties and powers of the corporation of the City of Baltimore; and further, that said Commissioners and said Board may, especially, be restrained, prevented and prohibited from creating, or attempting to create, in the name or on behalf of the city of Baltimore, or the corporate powers of said city, or upon the property of the corporation of the said city, or upon the property of individuals locally situate and being within the territorial limits of said city, any debt, charge, obligation, or liability whatsoever; and further, that said Commissioners, and said Board, may be restrained, prevented, and prohibited from interfering, or attempting to interfere, with the police department, established for said city, under the Constitution of the State and the ordinances of said city, and from hindering, obstructing, resisting, or opposing the executive officers of said city in the exercise of their lawful powers, and in the discharge of their official duties; and from attempting, in any manner, to subvert the corporate government of said city.

And to the ends aforesaid, your Petitioner prays your Honor to lay a rule upon the said Charles Howard, William H. Gatchell, Charles D. Hinks and John W. Davis, hereinbefore named, and who are named in said Bill as Commissioners in said Bill,

requiring them to shew cause, within such time as your Honor may deem proper, why a writ of mandamus shall not issue as prayed.

JONATHAN MEREDITH,
WILLIAM PRICE,
WILLIAM SCHLEY,
TH. S. ALEXANDER,
For Petitioner.

STATE OF MARYLAND,
City of Baltimore, to wit:

Be it remembered, That on this day of February, 1860, before me, a Justice of the Peace of the State of Maryland, in and for the City of Baltimore, personally appeared Thomas Swann, Esq., Mayor of the said City of Baltimore; Samuel G. Spicer, President of the First Branch, and David Taylor, President of the Second Branch of the City Council of Baltimore; and severally made oath on the Holy Evangely of Almighty God, that the facts, matters, and circumstances set forth and contained in the aforegoing Petition, are true, to the best of their knowledge and belief.

Sworn before

IN THE SUPERIOR COURT OF BALTIMORE CITY:
February 27 th, 1860.

ORDERED, that Charles Howard, William H. Gatchell, Charles D. Hinks and John W. Davis, the defendants named in the foregoing Petition, shew cause, on or before the 5th day of March next, why a writ of mandamus should not issue as prayed. And it is further ordered, that a copy of the said Petition, and a copy of this rule, shall be served on said defendants on or before the first day of March next

R. N. Marbi

Service of the preceding petition and order admitted, this 27th February 1860

Thos J Johnson

J. Mason Campbell

Wm Henry Norris

S. F. Wallis

for the Board

J P Pitts

Exhibit A.

VOL. XLVI.—NO. 67.] BALTIMORE, F

THE NEW POLICE AND ELECTION LAWS

FOR THE CITY OF BALTIMORE.

We have full copies of the Police and Election Laws which have just passed both branches of the Legislature of Maryland, and go into effect immediately. There are five bills in all. One of them merely repeals the seven hundred and sixth section of the code of public local laws, which gives to the mayor of the city of Baltimore, the judge of the criminal court of Baltimore, and the judge of the superior court of Baltimore city, the power to order out the militia in certain cases therein mentioned.

Another amends the 817th section of the 4th article of the code of public laws, by giving the mayor and city council of Baltimore the power not only to clean the streets and protect the pavements of the city, but also to erect lamps and cause the same to be lighted at the expense of said city. Two others relate to the mode of conducting elections in Baltimore, one of which we published some days ago. The remaining bill creates the new police for Baltimore, which we reprint as it passed both houses. It is as follows:

The Police Act.

A bill entitled an act to amend the fourth article of the code of public local laws, by amending the thirty-third section of said article, relating to the police and general power of the Mayor and City Council of Baltimore, and repealing the seven hundred and seventy-fourth, seven hundred and seventy-fifth, seven hundred and seventy-sixth, and seven hundred and seventy seventh sections of said article, relating to the police of said city, and the power of the Mayor and City Council, to establish and regulate the same, and inserting in said article in lieu of the sections so repealed the following sections, for the purpose of providing a permanent police for the city or Baltimore.

Section 1. Be it enacted by the General Assembly of Maryland, that the following be a substitute for section thirty three of the fourth article of the code of public local laws; they may pass ordinances for preserving order, securing property or persons from violence, danger or destruction, protecting the public and city property, rights and privileges from waste or encroachment, and for promoting the great interests and insuring the good government of the city; but no ordinance heretofore passed, or that shall hereafter be passed by the Mayor and City Council of Baltimore, shall in any manner conflict or interfere with the powers or the exercise of the powers of the board of police of the city of Baltimore, hereinafter created, nor shall the said city, or any officer or agent of the corporation of said city, or of the mayor thereof, in any manner impede obstruct, hinder or interfere with the said board of police, or any officer, agent or servant thereof or thereunder.

Sec. 2. That the seven hundred and seventy-fourth section of said article, which authorizes the Mayor and City Council to establish night watches or patrols, and erect lamps; the seven hundred and seventy fifth, seven hundred and seventy-sixth and seven hundred and seventy-seventh sections of said article, which authorize the Mayor and City Council to appoint, pay and arm the police of said city, and protect the said police in the discharge of their duty, be and the same are hereby repealed, and that the following sections be inserted in said article as a substitute for and in lieu of the said sections so repealed.

Sec. 3. There shall be and is hereby established within and for the city of Baltimore, a board of police, to be called the board of police of the city of Baltimore, to consist of four commissioners, as is hereinafter provided, together with the mayor of said city for the time being, or whosoever may be lawfully acting in that capacity; the said commissioners shall be citizens of the United States, shall have been residents of said city for the period of twelve months next preceding their appointment; they shall, except as hereinafter specified, hold their offices for four years, and until their respective successors shall have been appointed and qualified, and shall receive each a salary of two thousand dollars per annum, payable quarterly; before entering on the duties of their said office the said commissioners and the said mayor shall take and subscribe, before the judge of the Superior Court of Baltimore city, or the clerk thereof, the oath or affirmation prescribed by the fourth section of the first article of the constitution, and shall also take and subscribe before the same judge or clerk the further oath or affirmation, that in any and every appointment or removal, to be by them made to or from the police force created and to be organized by them under this article, they will in no case, and under no pretext appoint or remove any policeman or officer of police, or other person under them, for or on account of the political opinions of such policeman, officer or other person, or for any other cause or reason than the fitness or unfitness of such person, in the best judgment of the said mayor or commissioners for the place to which he shall be appointed or from which he shall be removed; and the said oaths or affirmations shall be recorded and preserved among the record of said court; one of their own number shall, from time to time, be appointed by said commissioners, treasurer of the board of police, and his appointment when made, shall be certified to the clerk of the Superior Court of Baltimore city, under the seal of said board; the said treasurer shall hold his office for such term as may be designated by the commissioners, who may remove him at pleasure, and shall be entitled to additional compensation at the rate of five hundred dollars per annum, for acting in that capacity; before he enters on the duties of his office of treasurer, he shall give bond to the State of Maryland, with one or more sureties, in the penalty of fifty thousand dollars, conditioned for the faithful discharge of his duties as treasurer of the board of police, and for the faithful application and payment over, pursuant to the order and directions of said board, of all moneys which may come to his hands as such treasurer; the bond of the treasurer shall be approved by the judge of the Superior Court of Baltimore city, and be kept and recorded by the clerk of said court, in the office thereof, together with the certificate of his appointment as aforesaid; a majority of the board of police shall constitute a quorum, and the failure or refusal of the mayor or acting mayor of the city of Baltimore to qualify or act hereunder, shall, in nowise, impair the right or duty of said commissioners to organize and proceed, as herein provided; in case a vacancy shall happen among the commissioners during the recess of the Legislature, it shall be filled by the remaining commissioners, or a majority of them, the appointment so made to continue till the appointment and qualification of some person for said vacancy, which appointment shall be made by the General Assembly on joint ballot, at the next regular session of the Legislature; and the General Assembly shall also, in like manner, appoint commissioners to succeed those whose term of office shall expire; such appointment to be made at the session of the Legislature immediately preceding such expiration; any one of said commissioners who, during his term of office, shall accept any other place of public trust or emolument, or who, during the same period, shall knowingly receive any nomination for an office elective by the people, without publicly declaring the same within twenty days succeeding said nomination, shall be deemed to have thereby vacated his office; for official misconduct any of the said commissioners may be removed by a concurrent vote of the two houses of the General Assembly.

Sec. 3. The following persons, to wit: Charles Howard, William H. Gatchell, Charles D. Hinks and John W. Davis, of the city of Baltimore, are hereby appointed the first commissioners under this article, and so soon as they shall have been qualified by taking and subscribing the oaths or affirmations hereinbefore mentioned, they shall divide themselves into two equal classes, to be determined by lot, and the two who shall be drawn of the first class shall serve from the time of their appointment until the end of two years from and after the 10th day of March, 1860, and until their successors shall have been appointed and qualified; and the two who shall be drawn of the second class, shall serve from the time of their appointment until the end of four years from and after the 10th day of March, 1860, and until their successors shall have been appointed and qualified; when the division into classes as herein prescribed shall have taken place, notice thereof shall be at once given to the Governor by the commissioners, in writing, to be filed in the State Department.

Sec. 4. The duties of the board of police hereby created shall be as follows: They shall, at all times of the day and night, within the boundaries of the city of Baltimore, as well on water as on land, preserve the public peace, prevent crime, and arrest offenders; protect the rights of person and property, guard the public health, preserve order at every public election and at all public meetings and places and on all public occasions; prevent and remove nuisances in all streets, highways, waters and other places; provide a proper police force at every fire for the protection of firemen and property; protect strangers, emigrants and travelers at steamboat and ship landings and railway stations; see that all laws relating to elections and to the observance of Sunday, and regarding pawnbrokers, gambling, intemperance, lotteries and lottery policies, vagrants, disorderly persons, slaves and free negroes, and the public health, are enforced; and also enforce all laws, and all ordinances of the mayor and city council of Baltimore, not inconsistent with the provisions of this article or any other law of the State, which may be properly enforceable by a police force; in case they shall have reason to believe that any persons within said city intend to commit any breach of the peace or violation of law or order, beyond the city limits, upon the Chesapeake bay, or any river, creek, or other place on land or water, within the State, it shall also be their duty to cause such persons to be followed, and to take the most effectual measures for the suppression and prevention of such outrages whenever they may be attempted, and to arrest the offenders; Provided, however, that if any crime be actually committed by such persons, the offenders shall be delivered to the proper jurisdiction for trial and punishment; any person charged with the commission of crime in the city of Baltimore, and against whom criminal process shall have issued, may be arrested upon the same in any part of this State by the police force created by this article under such rules and regulations as the board of police may adopt; and the said board shall have power to administer oaths or affirmations, in the premises, to any person appearing or called before them, and shall also have the power of administering oaths or affirmations, and summoning witnesses before them, whenever it may be necessary for the more effectual discharge of their duties.

Sec. 5. To enable the said board to perform the duties imposed on them, they are hereby authorized and required, as speedily as may be, to appoint enrol and employ a permanent police force for the city of Baltimore, which they shall equip and arm as they shall judge necessary; the number of policemen to be so appointed and employed, exclusively of officers, shall, at the first organization, be three hundred and fifty, with power, however, to reduce that number, or increase it to not more than four hundred and fifty, as experience may warrant; provided, however, that for extraordinary emergencies, the board may raise such additional force as the exigency may, in their judgment, demand; no person shall be appointed or employed either as policeman or officer of police, who shall have been convicted of, or against whom any indictment may be pending for, any offense, the punishment of which may be confinement in the penitentiary; and among the necessary qualifications for such appointment and employment, shall be citizenship of the United States, ability to read and write, good character, and physical strength and courage; no black republican or sympathizer of that party, or endorser of the Helper book, or approver thereof, shall be appointed as a policeman; the policemen shall be employed to serve for five years, and be subject to removal only for cause, after a hearing by the board, who are hereby invested with exclusive jurisdiction in the premises; any policeman whose term of service shall expire, and who, during his appointment, shall have faithfully performed his duty, shall, if otherwise qualified, be preferred by the board in making their new appointments.

Sec. 6. The officers of police shall be as follows: one marshal of police, one deputy marshal, eight captains, eight lieutenants, twenty-four sergeants and eight turnkeys; they shall be appointed by the board for such time as the board shall determine, and be subject to removal by the board for cause.

Sec. 7. The pay of the ordinary policeman shall be ten dollars a week, payable semi-monthly; and in case the board shall appoint detective policemen, which they may do to the number of five, the detective shall receive the like sum, payable semi-monthly.

Sec. 8. The officers of police shall be paid semi-monthly, and their pay shall be as follows: the marshal shall receive fifteen hundred dollars a year, the deputy marshal one thousand dollars a year, each captain thirteen dollars a week, each lieutenant eleven dollars and fifty cents a week, each sergeant ten dollars and fifty cents a week, and each turnkey eight dollars and fifty cents a week.

Sec. 9. Whenever a vacancy shall take place in any grade of officers, except the marshal and deputy marshal, it shall be filled from the next lowest grade, if competent men can be found therein; the board of police are hereby authorised to make all such rules and regulations, not inconsistent with this article, as they may judge necessary for the appointment, employment, uniforming discipline, trial and government of the police, and for the relief and compensation of members of the police force, injured in person, and properly in the discharge of their duty, and of the families of men or officers killed while in its performance; provided, that the allowance shall not exceed in any one instance twelve months pay; the said board shall also have power to require of any officer or policeman, bond, with sureties, where they may consider it demanded by the public interest, all lawful rules and regulations of the board shall be obeyed by the police force on pain of dismissal or such lighter punishment, either by suspension, fine, reduction or forfeiture of pay, or otherwise, as the board shall adjudge.

Sec. 10. No officer of police or policeman shall be allowed to receive any money, or a gratuity or extra compensation for any services he may render, without the consent of the said board, and all such moneys as any policeman, or officer of police may be so permitted to receive, shall be paid over to the said board, and together with the proceeds of all fines, forfeitures, penalties and unclaimed property, which may come to the possession of the board, or be recovered by them under the provisions of this article or any other law, shall form a fund, which the board may apply towards the allowances to policemen and officers of police, and their families as hereinbefore authorized, and for extra pay to such members of the force as by gallantry and good conduct on extraordinary occasions, may be judged to merit it.

Sec. 11. The said board shall be, and they are hereby authorized, to provide themselves with such offices and office furniture, and other things; and such clerks and other subordinates as they may need, and to have and use a common seal, they shall divide the city into the needful number of police districts, and provide if necessary in each of them a station-house or houses, with all things and attendants required for the same, and all such other accommodations as may be required for the police; the said board for the purposes of this article, shall have the use of the fire-alarm and police-telegraph in said city, and of all station-houses, watch-boxes, arms, accoutrements and other accommodations and things provided by the mayor and city council of Baltimore, for the use and service of the police created by said mayor and city council, as fully and to the same extent as the same are now and may be used, by or for the said city police; and the said mayor and city council, and all persons and municipal officers in charge thereof are hereby ordered and required to allow such use accordingly; in case the said mayor and city council or its officers or agents refuse or neglect to allow such use, as and when the same shall be required by said board, the said board may apply to the Superior Court of Baltimore city, in the name of the State, for a mandamus to compel a compliance with the provisions of this section, and the application therefor shall be heard and decided by the court; one week's notice of the application shall be given, and the respondent or respondents shall have the right to answer within the week, and if testimony be needed on either side the same shall be taken within ten days after the answer is filed or the said week shall have expired; from the decision of the Superior Court in the premises either party may appeal within ten days, and it shall be the duty of the clerk to send up the record immediately, and the appeal shall be heard by the Court of Appeals if then in session, and if not in session at the next term; in both courts the case shall be taken up and tried in preference to all others.

Sec. 12. It shall be the duty of the sheriff of Baltimore city whenever called on for that purpose by said board to act under their control for the preservation of the public peace and quiet, and if ordered by them to do so he shall summon the posse comitatus for that purpose, and hold and employ such posse subject to their direction; in case the board shall deem it necessary, they shall call out such of the military force lawfully organized or existing in the said city as they may see fit to aid them in preventing threatened disorder or opposition to the laws, or in suppressing insurrection, riot or disorder on election days and at all other times; and it shall be the duty of the said military force so called out to obey such directions as may be given them by the said board whenever the exigency or circumstances may in their judgment warrant it; the said board shall have the power to assume the control and command of all conservators of the peace in the city of Baltimore whether sheriff, constables, police or others, and they shall act under the orders of the said board and not otherwise; and in case of the refusal of the said sheriff, or of any policemen, constable or other peace officer or person to obey any lawful command of said board under the provisions of this section, they shall respectively be liable to the penalties following: that is to say: the said sheriff to a penalty of five thousand dollars, any peace officer to a penalty of five hundred dollars, and any private citizen to a penalty of one hundred and fifty dollars, said penalties to be recoverable by said board by civil action in the name of the State; and any officer of any military force in Baltimore city organized or existing under the law of this State, who, upon being called on by said board as aforesaid, shall refuse or wilfully fail to call out the force under his command, or to obey the directions of said board, or to enforce by all lawful means the performance of the duties to said force assigned, shall be liable to a penalty of five hundred dollars; and any inferior officer or private of such force, who shall refuse or wilfully fail to obey the summons or order of his proper superior in such behalf issued, shall be liable to a penalty of one hundred and fifty dollars, such penalties to be recoverable as aforesaid.

Sec. 13. So soon as the board created by this article shall hold their first meeting, it shall be their duty to inform the marshal or deputy marshal of police in the city of Baltimore, (or chief or second officer thereof by whatever titles designated) or both, that they require his or their attendance upon them, and disobedience to their orders, which attendance and obedience the offices so notified shall be bound respectively to give, under a penalty of five hundred dollars each, to be recoverable by action at law instituted by said board in the name of the State, for failure to attend as required, and for each and every failure to obey the lawful order of said board then and therefore; and from and after the first meeting aforesaid, the whole then existing police force in the city of Baltimore, both officers and men, shall pass under the exclusive management and control of the said board and be subject to no other control, and entitled to receive neither orders nor pay (except arrearages then due) from any other authority, and shall so continue, subject, however, to removal or suspension, at the discretion of said board, and with the power in said board to fill vacancies, until the said board shall publicly declare that the organization of the police force created by that article is complete; upon such public declaration, and from the time thereof, all ordinances of the Mayor and City Council of Baltimore are hereby annulled and declared void so far as they conflict with this article, or assume or confer upon the mayor or any other person or persons, the power to appoint, dismiss, or in any way or to any extent, employ or control any police force organized or to be organized under such ordinances or any of them; and from and after such public declaration as aforesaid, the police force organized or which may be organized under such ordinances or any of them shall cease to exist, and all its functions and powers be at an end.

Sec. 14. It shall be the duty of the said board with all convenient speed after qualifying as aforesaid, and annually thenceforward, to estimate what sum of money will be necessary for each current fiscal year, to enable them to discharge the duties hereby imposed on them, and they shall forthwith certify the same to the mayor and city council of Baltimore, who are hereby required, without delay, specifically to assess and levy such amount as shall be sufficient to raise the same, clear of all expenses and discounts, upon all the assessable property in the city of Baltimore, and to cause the same to be collected as all other city taxes; and it is hereby made the duty of the collector of the city of Baltimore, and he is required to collect said tax, and no bill of city taxes other than for interest on the city funded debt (except bills of city taxes payable before the year 1860,) shall be demanded or recoverable from any person by the mayor and city council of Baltimore, unless the same shall contain the proper charge for such tax, to be denominated the police tax; and the said board of police, upon and after qualifying as aforesaid, are hereby authorized to make requisition from time to time upon the mayor, register, comptroller of the city of Baltimore, or other proper disbursing officer or officers of the corporation, for such sums of money as they may deem necessary for executing their duties under this article; provided, however, the same shall not exceed in any year the amount so as aforesaid certified which may thereafter be certified for that year, to the mayor and city council aforesaid; and in case the said disbursing officer or officers shall not forthwith pay over the amount of each requisition as made, it shall be the duty of said board, and they are hereby authorized and required to issue certificates of indebtedness in the name of the mayor and city council of Baltimore, in such amounts as they may deem advisable, for the amount of such requisition respectively, bearing interest at six per cent. per annum, payable at not more than twelve months after date, and signed by a majority of the board, and to raise the money on said certificate by pledging or disposing of the same, which certificates shall be receivable at par in payment of city taxes and be as binding on said corporation and as recoverable against it, as if the mayor and city council of Baltimore had themselves issued said certificates; and the mayor and city council of Baltimore shall have no power or authority to levy or collect any tax or appropriate any money for the payment of any police force other than that to be organized and employed under this article, and no officer or servant of the said mayor and city council shall disburse any money therefor; and the power of the said mayor and city council to levy and collect taxes, and appropriate and disburse money for the payment of the police force to be organized or employed under this article, shall be exercised as is in this article directed, and not otherwise; provided, however, that nothing herein contained shall effect the power of said mayor and city council, under the nineteenth section of the fourth article of the constitution; and it is further enacted, that in case the amount so as aforesaid to be estimated by the said board, shall, from any unforseen cause, prove insufficient for the necessary expenses of the current year, the said board are hereby authorized and empowered to issue certificates and raise money therefrom as hereinbefore provided to meet the exigency; provided, however, that no such additional issue shall exceed the sum of thirty thousand dollars in one year, and that the amount thereof shall be added to the estimate, assessment, and levy for the year next ensuing; and that the said certificates shall not be made payable at an earlier date than the first day of August next after the issuing of the same, and shall not be receivable in payment of city taxes earlier than those for the year in which they shall so be payable.

Sec. 15. Any officer or servant of the mayor and city council of Baltimore, or other person whatsoever who shall forcibly resist or obstruct the execution or enforcemen of any of the provisions of this article providing a permanent police for the city of Baltimore, or relating to the same, or who shall disburse any money in violation thereof, or who shall hinder or obstruct the organization of the said board of police or the police force hereinbefore provided to be organized, or who shall maintain or control, or attempt to maintain and control the existing police force of said city or any part thereof, or any other police force under the ordinances hereinbefore repealed, except as herein provided, shall be liable to a penalty of $1,000 for each and every such offense, recoverable by the board by action at law in the name of the State, and shall forever thereafter be disqualified from holding or exercising any office or employment whatsoever under the mayor or city council of Baltimore or under this article; provided, however, that nothing in this section shall be construed to interfere with the punishment, under any existing or any future law of this State, of any criminal offense which shall be committed by the said parties in or about the resistance, obstruction, hindrance, conspiracy, combination, or disbursement aforesaid.

Sec. 16. The said board shall have the power, and it shall be their duty, from time to time to select and employ, from among the duly elected and qualified justices of the peace for the city of Baltimore, such justice or justices as may be required, and as they may deem proper, to sit at the respective station houses, for the hearing of such charges as may be brought against persons arrested and carried to the said station houses, and shall have full power to pay to him or them such moderate compensation as they may judge fit, and to remove and change the said justices in their discretion; provided, however, that nothing in this section shall be construed to prohibit the said justices from recovering from the parties so arrested, such fees as they may be by law entitled to receive for their services; and it shall be the duty of the officers and policemen appointed under this article, to execute any warrants or commitments which the justices employed as aforesaid may issue to them, or any of them, directed.

Sec. 17. The board shall cause a full journal of their proceedings to be kept, and shall also cause all their receipts and disbursements of moneys to be faithfully entered in books to be procured for that purpose; and said journal, and all said books, and all other documents in the possession of said board, shall always be open to inspection by the General Assembly of Maryland, or any committee appointed by it for that purpose; it shall be the duty of the board to report to the General Assembly at each regular session, or as it may hereafter direct, the number and expense of the police force employed by them under this article, and all such other matters as may be of public interest in connection with the duties assigned to them by this article; and a like report shall be made to the mayor and city council of Baltimore, at each annual session of the said city council.

Sec. 18. Nothing in this article contained shall be taken to destroy or diminish the liability or responsibility of the mayor and city council of Baltimore, for any failure to discharge the duties or obligations of said corporation, or any of them; the board of police hereby created being, and they are hereby constituted to be, authorities of the said corporation, for all such purposes, to the same effect as is created and appointed by or under the said mayor and city council; provided, however, that nothing in this section shall be construed to give to the said mayor and city council, or any officer of said corporation, any control over said board or any officer or policeman appointed thereby.

Sec. 19. That this act shall take effect from the day of its passage.

REORGANIZATION OF THE U. S. ARMY.—The following are the provisions of the bill reported in the U. S. Senate by Senator Davis, for the better organization of the army:

First—The office of adjutant general, quartermaster general and inspector general, are to expire, and the duties are to be performed by brigadier generals, of which there are to be eight in the army.

Second—The four additional brigadier generals provided for by this act are to be selected from the field officers of the army, with the advice and consent of the Senate.

Third—The permanent organization of the staff is to be as follows: Adjutant general's department, consisting of one adjutant general with the rank of lieutenant colonel; eight assistants and judge advocates with the rank of major. Quartermaster general's department, one assistant quartermaster general, one deputy and eight assistants. Sustenance department, one commissary general, one assistant and six commissaries. Medical department, one surgeon general with rank and pay of colonel of cavalry, two assistants, twenty four surgeons and eight assistant surgeons.

The pay department remains as now organized, provided no appointment of paymasters be hereafter made, but the duties will be performed by the officers of the quartermaster's department.—All appointments are to be made by regular promotions from officers now belonging to these departments and afterwards from regimental officers.

Fourth—Three assistant adjutant-generals, nineteen assistant quartermasters, four assistant commissaries of subsistance may be selected from the first lieutenants of regiments, but such selection is to confer no additional rank.

Fifth—Regimental quartermasters are to be discontinued. Sixth—The corps of engineers and ordnance is to consist of one colonel, two lieutenant-colonels, four majors, ten captains. Seventh—Four second-lieutenants are to be added to each artillery regiment, and four first-lieutenants to each of the other regiments. Eighth—The President is empowered to transfer officers in the staff department in order to carry out this act, provided such transfer be without prejudice to the rank of the officer transferred. Ninth—Promotions hereafter in regiments shall be by regiments or corps, instead of by arms of service as now provided for.

WASHINGTON MONUMENT STATUES.—The House of Delegates of Virginia has passed an act "appropriating a sum of money to pay for the statues for the Washington monument, and for placing the same thereon." The bill appropriates the sum of $18,723 94 to be paid to Randolph Rogers "for constructing statues for the Washington monument," in pursuance of a contract between Ex-Governor Wise and said Rogers.

Supr. Court. (21

The Mayor and City Council
of Baltimore
vs
Charles Howard
William H. Galdwell
Charles D. Hinks
John W. Davis
Commrs

Answer

Filed 6th March 1860
as of the 5th Mch 1860

Copied 15 1/2

To the Honorable Robert N. Martin
Judge of the Superior Court of Baltimore City

The Answer of Charles Howard, William H. Gatchell, Charles D. Hinks and John W. Davis to the Petition of the Mayor and City Council of Baltimore lately filed in this Honorable Court for a Mandamus

These Respondents for Cause why a Mandamus should not issue as prayed, set forth and show, that the Act of Assembly referred to in the said petition as passed at the present Session of the General Assembly created and established a Board of Police of the City of Baltimore to consist of the Mayor of that City or whosoever might be Comptrolling acting in that Capacity, and of the four Commissioners therein named and appointed, and to be thereafter appointed in pursuance of it, and provided among other things that a majority of said Board should constitute a quorum, and that the failure or refusal of the Mayor or acting Mayor of the said City to qualify or act thereunder, should not in any wise impair the right or duty of the said Commissioners to organize or proceed in the Execution of their

prescribed functions

That the present Mayor of Baltimore though requested to qualify and act as a member of said Board has declined to do so

That the Commissioners named in and appointed by said act, to wit, Charles Howard, William H. Gatchell, Charles D. Hinks, and John W. Davis accepted said appointment, and before entering on their duties generally took and subscribed before the Clerk of this Court the oath required by the 4th section of the 1st Article of the Constitution and also the oath prescribed by said act to be taken and subscribed by them before their entrance on their said duties

That as soon as they were thus qualified the said Commissioners (there Respondents) divided themselves by lot into two classes as directed by said act, the said Charles Howard and John W. Davis being drawn of the first class, and the said William H. Gatchell and Charles D. Hinks being drawn of the second class, and gave notice thereof in writing to the Governor, and so soon as the said Board held its first meeting to wit on the 6 February 1860 it informed in writing Benjamin W. Henry Marshal, and Stephen H. Manly Deputy Marshal of Police in the City of Baltimore being the chief and

second Officer of said Police that it required their at=
=tendance and and obedience to its orders which
they nevertheless refused in military to give, and
which they never have given

That by force of the Act aforesaid and the
premises, from and after the first meeting of said
Board which took place on the 6 February 1860, the
whole Existing Police force in the City of Baltimore
passed under the Exclusive management and Control
of said Board, and is now by the provisions of the
said Act subject to no other Control, and entitled to
receive neither orders nor pay (except arrearages
if any therefore) and so continues

That the said Board, for the Police so under
its exclusive management and Control, needing im=
=mediately the use as well of the Fire alarm and Police
Telegraph in said City as of all the Station houses
watch boxes arms accoutrements and other accomm=
=odations and things provided by the Mayor & City Council
of Baltimore for the use and service of the Police
created by said Mayor and City Council as fully and
to the same extent as the same at the time of the pas=
=sage of said Act were or might be used by or for said
City Police, applied to the said Mayor and City Council
for such use thereof, and that the said Mayor and

City Council refused to allow such use when and as required by said Board

That upon such refusal the said Board made application to this Honorable Court for a Mandamus to be directed to said Mayor and City Council commanding and enjoining them to allow the use of said Fire alarm and other things specified in said application and in the manner and to the extent therein specified, and that the said Mayor and City Council filed in this Court their answer to said application under their corporate seal in which they set forth not only their objections to the specific relief prayed but also their objections to the act aforesaid upon which the said application was granted, and which said objections are substantially the same with those embraced in the present petition and relied upon as forming the basis of the relief prayed by it all which will more fully appear by a copy of the proceedings on said application herewith filed.

That it is not true that the police of the said City appointed and acting under its authority at the time of the passage of the act aforesaid and consisting as enumerated in said petition of 1 Marshal 1 Deputy Marshal, 8 Captains, 8 Lieutenants

24 Sergeants, 350 Police Officers, 5 Detectives and 8 Turnkeys were a temporary additional Police, but that on the Contrary they then were, and by force of the Ordinances of the City of the 1 January 1857 and 11 June 1858 establishing said Police had always been a Permanent as Contradistinguished from a temporary additional Police

That these Respondents are advised and therefore deny that the Petitioners upon the Case made in the said Petition have any right or title to the relief thereby prayed

And that they further rely upon and plead in bar of such relief the Act of Assembly aforesaid and the facts hereinbefore set forth, and also that other Act passed at the present Session entitled "An Act to amend the 4th Article of the Code of Public Local Laws by inserting therein the following Sections regulating Elections in the City of Baltimore, and to repeal the 18th Section of said Article touching Elections"

Reverdy Johnson
J. Mason Campbell,
Leon M. Trawles
[illegible]

State of Maryland
City of Baltimore Town
On this 6th day of March 1860 before
~~me the Subscriber a Justice of the Peace of said State in~~
~~and for said City personally appeared~~
in open Court appeared William H
Galdwell
and made oath on the Holy Evangels of Almighty
GOD that the facts stated in the foregoing Answer
are true to the best of their Knowledge, information
and belief

Geo E Sangston Clk

(3)

Superior Court.

Mayor & City Council
of Baltimore
v.
Charles Howard
and others

Mr Langston
Filed their Plea
Followed by
Wm Price
Wm Schley &
T. J. Alexander
Attys for Pltff

Filed 8th March 1860

To the Honorable Robert N. Martin, Judge of the Superior Court of Baltimore City.

The Pltfs of the Mayor and City Council of Baltimore, by their Attornies, J. Meredith, W. Price, W. Schley and T. S. Alexander, to the Answers of Charles Howard, William T. Gatchell, Charles D. Hinks, and Solon W. Davis, to the Petition of said Mayor and City Council, lately filed in this Court, praying for the State's Writ of Mandamus.

These Petitioners for plea to said Answer, deny that it is true, as alleged in said Answer that the Police of the City of Baltimore, appointed and acting under its authority, at the time of the passage of the Act of Assembly mentioned and referred to, consisting of one Marshal, one Deputy Marshal, eight Captains, eight Lieutenants, twenty four Sergeants, three hundred and fifty Police Officers, five Detectives and eight Turnkeys, then were, and by force of the Ordinances of the City of the 1st of January 1857 and 11th of June 1858, establishing said Police, had always been, a Permanent, as contradistinguished from a temporary, additional Police.

J. Meredith, Wm Schley, Attornies for
Wm Price, Thos J. Alexander, Petitioners

Filed 13 March 1860

Mayor & City Council of Baltimore
v.
Charles Howard & others

Superior Court of Baltimore City

The Petition for Mandamus in this case having been regularly heard & considered, it is hereby ordered this 13th day of March 1860 that said Petition be dismissed with costs

R. N. Martin