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Filed June 3rd 1865

JOHN LEE CHAPMAN

vs.

JOHN MORROW, EDMOND WOLF AND SAMUEL WHEELER,

TRUSTEES OF THE POOR OF BALTIMORE CITY.

APPEAL FROM THE SUPERIOR COURT OF BALTIMORE CITY.

John Lee Chapman, as Mayor of the city of Baltimore, on the 29th day of April, 1863, dismissed John Morrow, Edmond Wolf and Samuel Wheeler, from the offices of Trustees of the Poor of the city. That by art. 4, of the Public Local Laws, sec. 26, it is declared that all persons holding offices under the corporation of the city shall, unless otherwise provided by law or ordinance, hold such offices during the pleasure of the Mayor.

The power is therefore clearly in the Mayor to remove at pleasure all persons holding office under the city, unless otherwise provided for by law or ordinance. There are, therefore, two questions to be disposed of:

1. Do the Trustees of the Poor of the city hold office under the city corporation? 2. Is the removal of the Trustees of the Poor otherwise provided for by law or ordinance?

Upon the first question, Are they officers? I refer to the act of 1862, chap. 279, sec. 34, which declares that there shall annually be appointed five Trustees of the Poor, by the Mayor and City Council, *as other city officers are appointed.* This seems to me to be conclusive. The very act which creates the office and provides for the appointment, declares that they are city officers.

It was argued by the counsel for the respondents below, that the trustees were not city officers, because they were a corporation. But they are city officers at the same time that they are a corporation. They are placed by the act of '62 in the category of city officers. Such an arrangement is made

for convenience.—Ang. and Am. on Corp., sec. 11. There are other instances of the same kind of arrangement in the details of the city authorities. It is the case in the Visitors and other superintendents of the Jail of the city.—Code of Public Local Laws, art. 4, sections 567, 568. And it was never doubted that they were city officers. The Mayor is a city officer, yet he is the head of the city corporation.—3 Serg. & Rawl., 150.

The learned Judge below was of opinion that they were city officers and treated as such by the act of 1862.

2. Is the case of the Trustees of the Poor otherwise provided for by law or ordinance? The learned Judge thought it was. As thus—the act of 1862 declares that five Trustees of the Poor shall *annually* be appointed. This, as the Judge thought, made the tenure annual, and that it was equivalent to a declaration that they shall not be removable by the Mayor. Being an appointment for a year, they must hold the year out and were irremovable for any cause or by any power.

Now it so happens that all the appointments of the city are annual appointments; see ordinance No. 4, of the Revised ordinances of 1858, which declares that all officers of the city, except the Register, and others which are differently provided for, shall be appointed annually; and if it be true, that because all the appointments, with a few special exceptions, are to be made annually, the persons must hold for the whole year, then the great mass of the city officers are, when once appointed, independent of the city authorities, and there is no power there, no matter what their malversations in office may be, to oust them.

But what is it that is intended to be excepted in the 26th section of art. 4 of the Code of Public Local Laws? I give the whole section that we may comprehend its full import:

"26. All persons holding offices under the corporation of the city, shall, unless otherwise provided by law or ordinance, hold such office during the pleasure of the Mayor."

It is, therefore, the *tenure* of the office which forms the subject of the exception. If a person holds his office otherwise than at the pleasure of the Mayor, such person is within the exception—otherwise he is not. What, then, is the specific meaning we are to attach to the words, "Unless otherwise provided by law or ordinance?" It is this—unless some law or ordinance has provided for his removal otherwise than by the order of the Mayor.

The case of the Register, which is provided for by the 25th section of art. 4, illustrates this view of the question.

The Register is appointed by a convention of the two branches of the City Council *biennially*, and shall be removable at pleasure by a convention of the said two branches. This section provides for the removal of the Register otherwise than by the order of the Mayor. The case of the Register is therefore fairly within the exception.

But it is more. It is the instance given to illustrate the meaning of the ordinance No. 4, of the Revised Ordinances of 1858. His is not an annual appointment. But though appointed biennially, he does not therefore hold his office without accountability to any one, for he is removable at the pleasure of the power which appoints him.

Now as the instance given in ordinance No. 4, of the Revised ordinances of 1858, is one in which a mode of removal other than the order of the Mayor is expressly provided for, it follows that every person holding office under the city is removable by the Mayor and at his pleasure, unless a different mode of removal is distinctly provided for. For it cannot be that any officer, if he be found plundering or squandering the public money, shall still hold his office against the City Council, the Mayor and all the city authorities combined. And yet this thing must happen unless the power is given to the Mayor in all cases in which other modes of removal are not provided. The Mayor must have the power of removal of these Trustees, or it is nowhere.

The power of removal in some person is essential to the protection of the public interests, which is confessed in the fact that the whole power of removal under the general government—vast as it is—is one which arises from implication, and is no where expressly provided for, the deduction being that the power of removal is incident to the power of appointment.—*Ex parte* Duncan N. Hanson, 13 Pet. 259, 261; 2 Story on the Const., sec. 1537; see Opinions of Attorney Generals, 3 vol., 675–6; 4 ditto, 609, 610; 5 ditto, 290, 291.

It will be perceived that according to the ruling of Judge Martin, the appointments of these Trustees being annual, they hold to the end of the year, happen what will. There is no power of removal any where, and no forfeiture of their offices for any cause. If this be so, it is the only instance of the kind in the whole history of our institutions. No person holding a place of public trust can place himself above the power of the law, and above the remonstrances of public sentiment. There must be a power of removal somewhere, and if it be not in the Mayor it is nowhere and does not exist.

WM. PRICE, *for the Appellant.*

No. 8
Special Docket
April Term
1865 $10.40

John Lee Chapman
(Negro) —
vs
John Morris
Edmund Wolf and
Samuel Wheeler
Trustees of the Poor
in Baltimore Co.

Appellants Brief
filed April 6th 1865

Jno Lee Chapman
Mayor of Baltimore
vs
Edward Wolf & others

In the Court of Appeals
March Term 1865
Special Docket No. 3

This was a rule to show cause why a Mandamus should not be issued against John Thomas, Edward Wolf & Samuel Wheeler trustees of the poor of Baltimore City.

The respondents were discharged from office by the relator, but claimed a right to continue in office, notwithstanding their removal, upon the ground that the Mayor had no authority to remove them.

The sole question in this case therefore is, whether the Mayor ~~possesses~~ had the legal power of removal.

The appellant maintains that he had the power & with this object upon the following authorities in support of this right.

Code of Public Local Laws Art 4. Sec's 25. & 26. The first gives the Mayor the right to nominate & by & with the advice & consent of the Council, to appoint. The second declares that all persons holding offices under the Corporation of the City, shall until otherwise provided by law, hold such offices during the pleasure of the Mayor.

The second question is, whether the respondents hold their offices under the Corporation of the City?

Upon this point the act of 1862 Chap 269, is conclusive. It declares that four trustees of the ~~[illegible]~~ poor of Baltimore City shall be annually annually appointed, by other City officers are appointed. The legislature therefore declares ~~[illegible]~~ that the

trustees are city officers

The officers of the city hold their offices at the pleasure of the Mayor, unless otherwise provided by law. The Judge below, finds it otherwise provided in this — that they are appointed annually. They are to be appointed annually & therefore they are to be appointed for a year. And an appointment for a year is equivalent to a declaration that they shall hold during the year & shall not be removed within the year. The Judge decides therefore, that because these city officers hold their appointments for a year, they therefore do not hold their appointments at the pleasure of the Mayor. But the fact is that all the city appointments are annual. X That the trustees are a body corporate makes no difference. They are city officers notwithstanding they are corporators.

Ang. & Ames. on Corp. Sec's 408. 410.
427. 11. 3. S. & R. 150

As a general rule the power of removal is incident to the power of appointment. Exparte Hearn. 13 Peck. 230

It is generally settled that all appointments under the general government are at the pleasure of appointers.
Opinions of the Attorney General 3 Vol. 675. 676
Ib. 4 Vol 609. 610
Ib. . . . . 5 Vol. 250. 251.

Wm Price
Atty. for Appellant.

X And according to this decision the city officers are subject at the pleasure of the Mayor — but that the Mayor has not the power of removal except upon the ground.

Special Docket, No. 3.

COURT OF APPEALS OF MARYLAND.

APRIL TERM, 1865.

JOHN LEE CHAPMAN, Mayor,

vs.

JOHN MORROW, EDMUND WOLF and SAMUEL WHEELER,
Trustees of the Poor in Baltimore city.

Appeal from the Superior Court of Baltimore city.

APPELLANT'S BRIEF FILED APRIL 6TH, 1865.

This was a rule to show cause why a mandamus should not be issued against John Morrow, Edmund Wolf and Samuel Wheeler, Trustees of the Poor of Baltimore city.

The respondents were dismissed from office by the relator, but claimed a right to continue in office, notwithstanding their removal, upon the ground that the Mayor had no authority to remove them.

The sole question in the case therefore is, whether the Mayor had the legal power of removal?

The appellant maintains that he had the power and will rely upon the following authorities in support of this right:

Code of Public Local Laws, Art. 4, Secs. 25 and 26. The first gives the Mayor the right to nominate, and by and with the advice and consent of the Council, to appoint. The second declares that all persons holding office under the Corporation of the city, shall unless otherwise provided by law, hold such offices during the pleasure of the Mayor.

The next question is, whether the respondents hold their offices under the Corporation of the city.

Upon this point the Act of 1862, Chap. 269, is conclusive. It declares that five Trustees of the Poor of Baltimore city shall be

annually appointed *as other city officers* are appointed. The Legislature therefore declare that these Trustees are city officers.

The officers of the city hold their offices at the pleasure of the Mayor, unless otherwise provided by law. The Judge below finds it otherwise provided in this :—that they are appointed annually. They are to be appointed annually and therefore they are to be appointed for a year. And an appointment for a year is equivalent to a declaration that they shall hold during the year, and shall not be removed within the year. The Judge decides therefore, that because these city officers hold their appointments for a year, they therefore do not hold their appointments at the pleasure of the Mayor. But the fact is that all the city appointments are annual, and according to this reasoning the city officers all hold at the pleasure of the Mayor, and yet the Mayor has not the power of removal during the year.

That the Trustees are a body corporate makes no difference. They are city officers notwithstanding they are corporators.

Ang. & Am. on Corp., Sec's 408, 410, 427, 11.
3 S. & R., 150.

As a general rule the power of removal is incident to the power of appointment.

Ex-parte Hanson, 13 Pet., 230.

It is finally settled that all appointments under the General Government are at the pleasure of Executive.

Opinions of the Attorney Generals, 3 vol., 675, 676.
Ib. " " 4 vol., 609, 610.
Ib. " " 5 vol., 290, 291.

WM. PRICE,
Atty. for Appellant.

Special Docket, No. 3.

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The officers of the city hold their offices at the pleasure of the Mayor, unless otherwise provided by law. The Judge below finds it otherwise provided in this:—that they are appointed annually. They are to be appointed annually and therefore they are to be appointed for a year. And an appointment for a year is equivalent to a declaration that they shall hold during the year, and shall not be removed within the year. The Judge decides therefore, that because these city officers hold their appointments for a year, they therefore do not hold their appointments at the pleasure of the Mayor. But the fact is that all the city appointments are annual, and according to this reasoning the city officers all hold at the pleasure of the Mayor, and yet the Mayor has not the power of removal during the year.

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Opinions of the Attorney Generals, 3 vol., 675, 676.
Ib. " " 4 vol., 609, 610.
Ib. " " 5 vol., 290, 291.

WM. PRICE,
Atty. for Appellant.

No 168 178

$13.60

Chapman

to

Morrow

Appellees Brief

Filed Oct 8th 1864

Send one copy to
Mr Harper

John L. Chapman, Mayor
of the City of Baltimore
vs
John Morrow, Edmond Wolf
and Samuel Wheeler - Trustees
of the Poor of Baltimore City

Court of Appeals
of Maryland

Appeal from the Superior Court
of Baltimore City.

Appellee's Statement and Points.

This is an appeal from an order of the Superior Court for Baltimore City dismissing a petition for a mandamus, filed by John Lee Chapman, Mayor of said City. The Mandamus applied for, was, in the language of the Petition - "to compel John Morrow, Edmond Wolf, and Samuel Wheeler, Trustees of the Poor of Baltimore City, from further interfering with the rights of the Petitioner, (and to Prevent them from any longer attempting to exercise the duties of Trustees as aforesaid".-

The facts of this case are fully set forth in the Answer of the Respondents to the Plaintiff's petition (see Record pages 2. 3. & 4) and in the Report and accompanying Resolutions of a joint special committee of the City Council of Baltimore, marked (A) on pages 6. 7. & 8, of the Record.

The Trustees of the Poor of Baltimore City and County were incorporated in the year 1822 - the Alms House property then being owned jointly by Baltimore City and Baltimore County;- see Revised Ordinances of the City for 1858 page 396.

In 1860, the Alms House property was divided between the City and County, and then the act in the Supplement to the code was passed. See Supplement page 30. —

The Petitioner undertook to dismiss these respondents, who were confessedly appointed Trustees of the Poor of Baltimore City, in February 1863, for one year.

1 Vol. Code page 157

Supplement to Code, title, city of Baltimore, page 30

As soon as the Trustees were appointed and had taken and subscribed the necessary oath, they became a "body politic and Corporate," under the name ~~and~~ style and title of "the Trustees of the Poor of Baltimore City", and by that name they had perpetual succession, and large powers. —

Same page of Supplement

See also 2. Vol Public Local Laws page 157 and

Revised Ordinances of the City of Baltimore for 1858 = pages 396 to 400, inclusive.

These Trustees, (the Respondents) all took and subscribed the oath and entered on the discharge of their duties, and were performing them at the time of their attempted removal. They were a corporation over which the Petitioner (the Mayor) had no more control than he had over any other corporators.

The Legislature have thought proper to confer on the "Mayor and City Council", the power to elect these trustees, but there their power ends.

The Legislature of a State may even delegate the power to create a corporation, but it is still the act of the Legislature, on

the principle, that qui facit per alium, facit per se.

Angel & Ames on Corp.s page 57 § 74

The Petitioner complains that his rights have been violated. What rights? His right was simply to nominate, and by and with the consent of the City Council to appoint the trustees. This was all his right=, the very fullest extent of it, and it will hardly be seriously contended that this has been in any way interfered with. But the Petitioner claims that he had the right to dismiss these trustees:- This we deny. But admit for the argument that he had the right, and that they refused to surrender the office;- what then? would the Petitioner be entitled to a Mandamus. The Superior Court of Baltimore City have decided that he would not be: the Petitioner has appealed from that decision to this court, and hence it becomes necessary to enquire what is the recognized doctrine on the subject of granting or refusing a Mandamus

The first great rule is this, that before a Mandamus will be granted in any case, the applicant must not only show a special legal right, but that there is no other specific remedy adequate to enforce that right.

Tapping on Mandamus pages 62 & 63

Angel & Ames on Corp. page 673 § 709 -&- page 674 § 710

8 East Rep.ts pages 213 & 220. King vs. Archbishop &c

1. Harris (Pa) Rept.s 75

2 Binney 362. Com. vs. Rosseter

And the right must not be merely incohate.

1. Wend. 318. People vs. The Trustees of Brooklyn

A mandamus does not lie to prevent a molestation against law; - as - not to molest a preacher.

5 Vol. Comyn's Digest page 40

The writ will not be granted in cases of doubtful right.

8 Peters Rep. 302 - 3 ; Life and Fire Ins. Co. -

Nor, if there is a Remedy in Chancery.

Angel & Ames on Corp. page 675 § 711

The Court will not grant a mandamus to compel a man to obey an order of Sessions. - the proper remedy is by indictment

6. Term Rep. 168 - 170

It was for the want of a complete legal right to pay from the East India Company, that the writ of Mandamus was refused to Sir Charles Napier, when applied for by him to compel the company to pay him his arrears of Allowance as com= = mander in chief of the Queen's, or the native forces in India

Napier ex parte, 18 Q.B. 692 = 12 Eng. L & Eq 45

Angel & Ames on Corps. page 673 § 709

These Trustees are not ministerial officers - They are Corporators and could not be removed during the time of their appointment but on charges preferred against them, and an opportunity afforded of defending themselves.

Angel & Ames on Corps. page 420 § 420

Again, the writ of Mandamus is a command requiring some specific acts to be done, as being the legal duty of the

person to whom it is directed, and is not for the purpose of restraining acts.

Angel & Ames on Corp.ns page 653 § 697

Tapping on Mandamus, page 63 - (side page 10)

3 Black.n Com.s page 110

The Petitioner so far from showing a right to be enforced, states distinctly that the right of removing the trustees, which he claims, has been fully exercised. The application therefore is virtually for a writ of Mandamus to prevent the alleged removed trustees from showing contempt for his authority a purpose for which the writ is never granted.—

These Trustees being a public corporation are officers of the State government.

8th Md. Reps.ts page 102, Mayor & City Council of Baltimore v Root.

But it is contended that the "Trustees of the Alms House" are not a corporation; and if they are, that they are merely a Quasi corporation. — a doctrine utterly untenable.

Angel & Ames on Corp.ns page 21 sec 31

15. Md Reps.ts pages 490 - 491 - 462

2. Kent's Com. 275

15 Md Reps.ts 385 - 6. Mayor &c v. Board of Police

No private action can be maintained against a Quasi Corporation, for a breach of its corporate duty, unless such action is given by statute:

7. Mass Repts 187. Riddle vs. Proprietors of the Lock & Canals on Merrimac River

As a public corporation, the City of Baltimore is to be governed according to the Laws of the Land, and is subject to the control of the legislature.

16. Md Reptr. 462

Again if these trustees are interfering with any right of the petitioner, he has a complete remedy by an action on the case and therefore a writ of Mandamus will not be granted.

Angel & Ames on Corp. page 675 § 710

For the same reason the writ will not be granted to compel trustees of an incorporated church to restore the prosecutor to the possession of a pew, to which he claims title.

Same; page 675 § 710

2. Binney Rep. 360, Com. v. Rosseter

But the very prayer of the petitioner shows that he has no case for a Mandamus. – His prayer is, that the writ be issued for the purpose of restraining the respondents from interfering with the rights of the petitioner &c This is the province of an injunction in a proper case, and not of a Mandamus. A mandamus is a writ directed to any person corporation, or inferior Court, requiring them to do some particular thing which the court issuing it, has previously determined, or at least supposes to be consonant to right and justice.

3. Black' Com. p 110

2. Burrill's Law Dic. p. 177

2. Bouvier's Law Dic p. 100

These Trustees being officers of the State Government (8 Md. Rep 102) if they illegally retain their office, should be restrained by injunction, or removed by Quo Warranto at the instance of the state.

Angel & Ames on Corp ~~p.~~ § 731-2

9. G. & J. 365

The writ of Quo Warranto being still recognized in Maryland as a legal subsisting and efficient writ.

1. Vol. Code Art. 69. § 4 & 8

9. G. & J. 365

The writ of Mandamus is not a writ of right, and is not granted as of course, but only at the discretion of the Court, to whom the application for it is made, and the discretion will not be exercised in favor of the applicant unless some just and useful purpose may be answered by the writ.—

Angel & Ames on Corp. page 654 § 698, & cases there cited

In England where a person unlawfully exercises an office the usual remedy against him is Quo Warranto — In Marshall v Harwood, this Court has determined that a person duly appointed to office might maintain Mandamus against the former incumbent who refuses to surrender the office to him.

9 Md. Rep 83

If therefore the Mayor has appointed successors to the present trustees, and they claim the office, it would be for them to apply for a writ of Mandamus: but the Mayor is not entitled to this writ. If he had the power of removal, he might exercise that power, but he could not

exercise it effectually, unless by appointing successors to the persons removed, and then the question would be one of right between the persons so appointed and the persons holding over.

Lastly, the Petitioner states that these trustees have not been recognized as such, since his attempted removal of them, but the Record shows the contrary; — it shows that the City Council two months thereafter, recognized them as "Trustees of the Alms House".

See Record pages 3 & 4

And that the petitioner himself recognized them nearly four months after he alleges that he had removed them.

Record — page 4. —

D. W. Hoopes
for Appellee.

No. 168.

COURT OF APPEALS OF MARYLAND.

JUNE TERM, 1864.

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vs.

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The Legislature have thought proper to confer on the "Mayor and City Council," the power to elect these trustees, *but there their power ends*.

The Legislature of a State may even delegate the power to *create* a corporation, but it is still the act of the Legislature, on the principle, that *qui facit per alium, facit per se*.

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The petitioner complains that *his rights* have been violated. What rights? His right was simply to *nominate*, and by and with the *consent of the City Council* to appoint the trustees. This was all his right, the *very fullest extent of it*, and it will hardly be seriously

contended that this has been in any way interfered with. But the petitioner claims that he had the right to dismiss these trustees. This we deny. But admit for the argument that he had the right, and that they refused to surrender the office: What then? Would the *petitioner* be entitled to a *mandamus?* The Superior court of Baltimore city have decided that he would not be. The petitioner has appealed from that decision to this court, and hence it becomes necessary to enquire what is the recognized doctrine on the subject of granting or refusing a *mandamus?*

The first great rule is this, that before a *mandamus* will be granted in any case, the applicant must not only show a *special legal right*, but that there is *no other specific remedy* adequate to enforce that right.

Tapping on Mandamus, pages 62 and 63.
Angel & Ames on Corp., page 673 §709, & page 674 §710.
8 East. Repts., pages 213 & 220, King vs. Archbishop, &c.
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A mandamus does not lie to prevent a *molestation against law*, as not to molest a preacher.

5 vol. Comyn's Digest, page 40.

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8 Peters Rep., 302-3. Life and Fire Ins. Co.

Nor if there is a remedy in Chancery.

Angel & Ames on Corp., page 675 §711.

The court will not grant a *mandamus* to compel a man to obey an order of sessions—the proper remedy is by indictment.

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It was for the want of a complete *legal right* to pay from the East India Company, that the writ of mandamus was refused to Sir Charles Napier, when applied for by him to compel the company to pay him his arrears of allowance as Commander-in-Chief of the Queen's, or the native forces in India.

Napier ex-parte, 18 Q. B. 692, 12 Eng. L. & Eq., 45.

Angel & Ames on Corps., page 678 §709.

These Trustees are not *ministerial officers*—they are *corporators*—and could not be removed during the time of their appointment but on charges preferred against them, and an opportunity afforded of defending themselves.

Angel & Ames on Corpns., page 420 §420.

Again, the writ of mandamus is a command requiring some *specific acts to be done*, as being the legal duty of the person to whom it is directed, and is not for the purpose of *restraining acts*.

Angel & Ames on Corpns., page 653 §697.

Tapping on Mandamus, page 63, (side page 10.)

3 Blackn. Coms., page 110.

The petitioner so far from showing a *right to be enforced*, states distinctly that the right of removing the Trustees, which he claims, has been *fully exercised*. The application, therefore, is virtually for a writ of mandamus to prevent the alleged removed Trustees from showing *contempt for his authority*, a purpose for which the writ is never granted.

These Trustees being a *public corporation* are officers of the State Government.

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But it is contended that the "Trustees of the Alms House" are not a *corporation;* and if they are, that they are merely a *quasi corporation*—a doctrine utterly untenable.

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15 Md. Repts., pages 490, 491, 462.
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Again, if these Trustees are interfering with any right of the petitioner, he has a complete remedy by an *action on the case*, and therefore a writ of mandamus will not be granted.

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For the same reason the writ will not be granted to compel Trustees of an incorporated church to restore the prosecutor to the possession of a pew, to which he claims title.

Same, page 675 §710.

2 Binney Rep., 360. Com. vs. Rosseter.

But the very prayer of the petitioner shows that he has no case for a mandamus. His prayer is, that the writ be issued for the purpose of *restraining* the respondents from interfering with the rights of the petitioner, &c. This is the province of an *injunction* in a proper case, and not of a *mandamus*. A mandamus is a writ directed to any person, corporation, or inferior court, requiring them *to do* some particular thing which the court issuing it, has previously determined, or at least supposes to be consonant to right and justice.

3 Black's Com., p. 110.

2 Burrill's Law Dic., p. 177.

2 Bouvier's Law Dic., p. 100.

These Trustees being officers of the State Government (8 Md. Reps., 102,) if they illegally retain their office, should be restrained by *injunction*, or removed by *quo warranto* at the instance of the State.

Angel & Ames on Corp., §§731–2.

9 G. & J., 365.

The writ of *quo warranto* being still recognized in Maryland as a legal subsisting and efficient writ.

1 Vol. Code, Art. 69, §§ 4 & 8.
9 G. & J., 365.

The writ of mandamus is not a writ of right, and is not granted as of course, but only at the disscretion of the court to whom the application for it is made, and the discretion will not be exercised in favor of the applicant unless some *just and useful purpose* may be answered by the writ.

Angel & Ames on Corps., page 654 §698, and cases there cited.

In England where a person unlawfully exercises an office the usual remedy against him is *quo warranto*. In Marshall vs. Harwood, this court has determined that a *person duly appointed to office* might maintain mandamus against the *former incumbent* who refuses to surrender the office to him.

9 Md. Rep., 83.

If therefore the Mayor has appointed successors to the present Trustees, and *they* claim the office, it would be for them to apply for a writ of *mandamus*. But the Mayor is not entitled to the writ. If he had the power of removal, he might exercise that power, but he could not exercise it effectually, unless by appointing successors to the persons removed, and then the question would be one of right between the *persons so appointed* and the *persons holding over*.

Lastly, the petitioner states that these Trustees have not been recognized as such since his attempted removal of them, but the record shows the contrary;—it shows that the City Council *two months* thereafter recognized them as "Trustees of the Alms House."

See Record, pages 3 and 4.

And that the petitioner himself recognized them nearly *four months* after he alleges that he had removed them.

Record, page 4.

D. H. HOOPES,

for Appellee.