EXHIBIT B

MAYOR HAVEMEYER'S CASE.

THE GOVERNOR DECLINES TO REMOVE HIM.

ACTION OF THE MAYOR CONDEMNED—THE GOVERNOR'S VIEWS ON THE POWER OF APPOINTMENT—GOV. DIX'S DECISION IN FULL.

STATE OF NEW-YORK, EXECUTIVE CHAMBER, ALBANY, Sept. 14, 1874.

In the matter of the charges against William F. Havemeyer, Mayor of the City of New-York.

It has been customary, in cases of accusation against public officers with a view to their removal under the authority confided by the Constitution and laws to the Chief Magistrate of the State, to direct an inquiry into the truth of the charges against them by the examination of witnesses before a County Judge or some other person designated for the purpose. In this case I deemed it due to the office of Chief Magistrate of the first City in the State to await his answer before proceeding any further. The answer when received seemed to me to render such an inquiry needless, and it was not, in fact, desired either by the accusers or the accused. The principal facts, which constitute the gravamen of the accusation, are not in dispute. They are admitted in the answer as fully as they are set forth in the charges, and it only remains for the Executive to determine whether they constitute a proper case for the exercise of the power of removal.

The charges presented to me are embodied in five papers or petitions, viz.:

1. A petition signed by and verified by the affidavit of Charles Watrous.

2. A petition signed by John P. Crosby, Joseph C. Jackson, Wm. M. Pritchard, C. A. Hand, Benj. B. Sherman, Wm. C. Barrett, and A. A. Redfield.

3. A petition signed by Elwood E. Thorne, H. A. Burr, and G. L. Shearer.

4. A series of resolutions adopted by the Board of Aldermen; and

5. Charges and specifications presented by Oswald Ottendorfer, John Kelly, and Wm. H. Wickham, and verified by the affidavit of the former.

The first two of these papers are identical. They are both, together with the last, sustained by documentary evidence, and all of them concur in asking that the Mayor may be removed from his office.

The charges against him in the last of the five enumerated papers, though supported by voluminous specifications, may be briefly summed up as follows, viz.:

1. Gross neglect of duty in refusing to investigate the official conduct of Oliver Charlick and Hugh Gardner as Police Commissioners of the City of New-York; and

2. Gross misconduct in office and abuse of the appointing power, by reappointing Oliver Charlick and Hugh Gardner to the office of Police Commissioner after their conviction of an offence involving a violation of their oaths of office, and in each case assigning one to the vacancy created by the other for the purpose of evading the provisions of the law; thus bringing the administration of justice into contempt, and degrading the public morality by protecting the victims of the criminal courts.

A third charge of "improper conduct in office" has a single specification consisting of deductions from the allegations contained in the two others.

The two petitions first mentioned set forth the facts on which the second of the above three charges are founded; the conviction of Messrs. Charlick and Gardner, and their subsequent reappointment after notice from the Governor that they were convicted of a misdemeanor, involving a violation of their oaths of office, and creating vacancies which the Mayor was required by law to fill. The petitions also set forth that each was assigned to the vacancy created by the other.

The petition signed by Elwood E. Thorne and others, contains the further charge of failing to investigate certain official delinquencies in the Board of Charities and Correction; an investigation which is shown by documentary evidence to have been already made; and also the charge of attempting to control the free action and usurp the functions of the Police Commissioners—an accusation not so supported by specifications as to require to be met except by a general denial.

Under the charge of "gross neglect of duty in refusing to investigate the official conduct of Oliver Charlick and Hugh Gardner as Police Commissioners," the specifications set forth a twofold delinquency: 1st. in refusing to investigate into the alleged delinquencies or malfeasance on the part of his subordinates, without specific charges from external sources, is not only to be unfaithful to the obligations expressly imposed upon him by law and accepted by his oath of office, but to violate every received maxim of official duty, even where no such obligations are specially enjoined.

A refusal to institute an examination in a case of flagrant violation of law or of gross abuse of official trust, on the sole ground that formal charges had not been presented by others, would unquestionably justify the Executive in exercising the power of correction confided to him by the Constitution. But in his answer to this portion of the charge the Mayor cites the reports of the Board of Health, embracing the whole period during which the Police Commissioners had been charged with the duty of street cleaning, and bearing testimony to the efficient manner in which it had been performed. It will not be contended that the opinion of the committee of the Assembly or the resolution of the Board of Aldermen made it obligatory on him to reconstruct the Board of Police or to investigate its conduct in respect to street cleaning. It was a matter of discretion, in the exercise of which great latitude is allowed; and it must be conceded that the reports of the Board of Health, declaring that the streets had not been in so clean a condition for many years as they were during the Summer of 1873 afforded a reasonable ground for declining to institute a formal investigation of the conduct of the Police Board in this respect, in the absence of specific allegations of misconduct. Some abuses by subordinates were alleged to have been committed; the Mayor declares that he had taken pains to ascertain their truth, and that there was no evidence that they existed by the willful sufferance of the Commissioners, or that the latter were not prompt to discharge and punish those guilty of the abuses, whenever made aware of their existence.

Under all these circumstances, whatever reason there may be to doubt the thoroughness of the Mayor's examination, there appears to me to be no just ground for executive interposition under this branch of the accusation of neglect of duty.

The other branch of this charge involves considerations of greater importance.

Oliver Charlick and Hugh Gardner, two of the Commissioners of Police, were brought to trial on the 24th of June last, on an indictment for violating the Election law of 1872, by removing an Inspector of Election without the previous notice required by that act, setting forth the reasons for the removal. Of this offense they were convicted on the following day, and on the 26th they were sentenced to pay a fine of two hundred and fifty dollars each. It was my opinion, on consultation with the Attorney General's department, that they had been convicted of a misdemeanor involving a violation of their oaths of office, and that their conviction created vacancies in their offices; and on the 1st of July I addressed to the Mayor, as the proper authority for filling the vacancies, the notice required by law. It appears that on the 27th of June they had resigned, and on the 2d of July they were reappointed by the Mayor—Charlick to Gardner's vacancy and Gardner to Charlick's. In his certificates of reappointment, the Mayor does not state in what manner the vacancies were created—whether by conviction or resignation—but declares that he has "been officially satisfied that a legal vacancy, for a legal cause, is now legally existing."

At the time of their reappointment both of these Commissioners were under three other indictments, found against them on the 30th of May for violations of the election law and set down for trial in October next.

As his justification for making these reappointments the Mayor relies on the opinion of George P. Andrews, who styles himself "assistant counsel to the corporation," and whose conclusions, on a review of the laws which he considers applicable to the case, may be briefly stated as follows:

1. That if the Commissioners had not resigned, it would have been necessary for the Mayor, on receiving notice from the Governor that the vacancies had been caused by the conviction "to consider whether the offense of which they were convicted involved a violation of their oaths of office, and thereby caused vacancies, which would be [his] your duty to fill;" and that their resignation relieved him from the necessity of considering this question at all.

2. That if the conviction of the Commissioners did "cause vacancies in their respective offices, this was the only effect thereby produced;" and

3. That there was no provision of law which rendered "Mr. Gardner and Mr. Charlick ineligible to appointment to the offices of Police Commissioners," and that the Mayor had in his discretion "the power and lawful right to make such reappointment."

Mr. Andrews, as a subordinate in the office of the counsel of the corporation appointed by his principal, was not acting under the responsibility of an officer elected by the suffrages of the people; and it would be natural to suppose that the Mayor, in a conflict of opinion with the chief magistrate of the State, in regard to the cause of the vacancies, would, in the absence of the chief of the law department of the City, have consulted with the experienced District Attorney or some of the eminent Judges in the First Judicial Department. Such a course would at least have indicated a decent respect for the Executive of the State, whose action was ignored by the Mayor on the opinion of a subordinate in a department of the City Government, who was not even the chief of a bureau, and who has no official status recognized by law; but was merely retained and authorized by the counsel of the corporation to perform his duties in his absence. It is not contended that the opinion of the Governor is final in such a case, and that it may not be judicially reviewed; but it might very properly have created a pause in the action of the Mayor, and a resort to the highest sources of authority for an adverse judgment. Such an act would have been of far more value than all the professions of respect with

cept by a general denial.

Under the charge of "gross neglect of duty in refusing to investigate the official conduct of Oliver Charrick and Hugh Gardner as Police Commissioners," the specifications set forth a twofold delinquency: 1st. in refusing to investigate into the alleged mismanagement of the street-cleaning bureau of the Police Board; and, 2d. In refusing to investigate the alleged misconduct of the Police Commissioners in respect to the general election of November, 1873.

In regard to the first branch of this charge of neglect of duty, it appears that an investigation was made of the management of the Street-cleaning Department in February and March last, under the order of the Assembly, by the Committee on the Affairs of Cities, of which Mr. Eastman was Chairman; and that the committee, after a most searching inquiry into the whole subject, reported as the result of their investigation:

1. That the large expenditure of $1,095,000 in street-cleaning had not been wisely or economically expended.

2. That the Board of Police had shown a culpable want of efficiency and lack of skill, system, and economy, and that the entire system of street-cleaning as conducted by them had been an imposition upon the people.

3. That the heads of the Street-cleaning Bureau and many of their subordinates were negligent and ignorant of their duties, that sources of revenue were neglected, and that more or less of the proceeds were applied to private profit, &c.

4. That the Street-cleaning Bureau had been crippled in its operations by the employment of incompetent laborers, and,

5. That the Police Board and Police force had failed to execute ordinances relating to garbage, the enforcement of which was necessary to improve the sanitary condition of the City.

The committee came unanimously to the conclusion that the Police Board did not occupy the position of men who recognized their first duty to be to the great mass of the people, and that any permanent improvement could only be expected from a reconstruction of the board.

It appears also that the Board of Aldermen seconded the suggestion of the committee of the Assembly in favor of a reconstruction of the Board of Police, by a resolution adopted on the 20th of April last, calling on the Mayor to suspend and remove the Police Commissioners.

To the communication of the Board of Aldermen the Mayor replied on the 4th of May, and, while professing ignorance of the proceedings of the committee of the Assembly, though held in the City of New-York, and investigating under his eyes a department of the Municipal Government, for the efficient and proper management of which, under the charter of the City, he is held responsible, he did not scruple to intimate that it had been apparently appointed "for partisan purposes," and that the proceedings "partook too much of a political character to command either the confidence or respect of the community."

The committee, whose proceedings were thus ignored, and whose character for impartiality was thus gratuitously impeached, was one of the permanent committees of the assembly, appointed at the organization of the Legislature by the Speaker, with a careful regard to the important interests intrusted to it, and having upon it some of the most honorable and conspicuous members of the Legislative body; and of the nine gentlemen who composed the committee, six were of the political party by whose votes mainly the Mayor was elected to office.

As a further justification for declining to take any action in regard to the Police Commissioners, the Mayor alleged that there were no specific charges against them, and offered to enter on an investigation of their conduct, if the Board of Aldermen would make charges which they were "prepared to substantiate."

Upon this intimation the Board of Aldermen appointed a special committee, to whom the Mayor's communication was referred. An elaborate report was made, recapitulating the proceedings and recommendation of the committee of the Assembly, setting forth the alleged misconduct of the Police Commissioners in regard to the general election of 1873, and again calling on the Mayor to reconstruct the board. This report was adopted by the Aldermen, and a copy served on the Mayor on the 29th of May. On the 4th of June the Mayor replied, again alleging that there were no specific charges against the Commissioners of Police, but pledging himself that a thorough investigation should be at once proceeded with under his own immediate supervision, and that the Aldermen should be duly apprised, so that they might produce any facts within their knowledge. This assurance was not fulfilled.

The position taken by the Mayor that he would not investigate the alleged misconduct of the Police Commissioners, unless specific charges were made against them, is indefensible on any recognized principle of government. It is the common law of all administrations of power that the chief in authority shall watch over the departments subordinate to him, and see that their functions are faithfully executed. It is his province to direct the proper legal officer to frame and submit charges on any allegation of misconduct with probable cause, instead of leaving a service pertaining to his own sphere of duty to be performed by other departments or by private individuals having only a common interest with all others in the proper management of the public affairs. In this case the charter of the city made it the Mayor's special duty to keep himself informed of the doings of the several departments, and to be vigilant and active in causing the Municipal laws and ordinances to be enforced. To refuse to investigate alleged,

final in [illegible] that it may not be judicially reviewed; but it might very properly have created a pause in the action of the Mayor, and a resort to the highest sources of authority for an adverse judgment. Such an act would have been of far more value than all the professions of respect with which his answer abounds. But the opinion of the executive was not deemed worthy of being considered for a single day; it must have been received on the morning of the 2d of July, and the reappointments were made before night.

Of the eighty pages of the Mayor's answer fifteen are devoted to an argument in support of the positions taken by Mr. Andrews. The degree of credit to which these positions are entitled will appear by comparison with the annexed opinion of the Attorney General of the State, which was asked for by me on the day after I heard of the reappointment of Messrs. Charlick and Gardner. This opinion maintains two propositions directly in conflict with those of Mr. Andrews and the Mayor, viz.:

1. That the conviction of the Commissioners was for a misdemeanor involving a violation of their oaths of office; and,

2. That they were not re-eligible to the offices to which they were reappointed.

This opinion renders it needless to enter into any examination of the Mayor's arguments, which are not less infelicitous than the illustrations, by which he seeks to palliate the failure of the Police Commissioners to give to an inspector of election the notice of removal required by law. He cites as an analogous case the nomination of Mr. A. T. Stewart by President Grant at the commencement of his administration to the office of Secretary of the Treasury in violation of section 8 of the act of Congress of the 2d September, 1789, entitled "An act to establish the Treasury Department," providing that no person appointed to any office instituted under it should be directly or indirectly interested in carrying on the business of trade or commerce, &c.

It is difficult to find two cases more unlike. The mistake of the President was made under an act of Congress which was more than eighty years old, which had fallen into oblivion, and which was nearly overlooked by the Senate. The omission of the commissioners was under an act of the Legislature passed the previous year—an act of general notoriety, applicable to constantly-occurring transactions, framed to put an end to scandalous frauds, and prescribing strict rules of conduct for all officers having any agency in conducting elections. The violated rule was one of the most vital of the safeguards against the very abuses which the act was intended to prevent. It was a real and not, as has been suggested, a technical offense.

The other illustration is even less apposite. The official order referred to was addressed to an officer of the revenue service after the war of the rebellion had commenced by the forcible seizure of forts, arsenals, and revenue cutters—a war undertaken and prosecuted without the customary formality of a declaration. It was intended to prevent the capture of a national vessel by armed insurgents, and, as a naked mandate, apart from the injunction to uphold the emblem of the national authority, it would have been held, in any court, civil or military, to be justifiable on every principle of law.

If it be conceded that the Mayor in reappointing the convicted Commissioners acted under a misdirection, and with a sincere belief that he had the requisite authority, it is still to be considered whether their reappointment, as an administrative act, was not obnoxious to other objections as grave as those which arise under the legal aspects of the case.

The power of appointment is one of the most important and delicate trusts that can be confided to an executive magistrate. Offices are public property; they should be filled with a single regard to the interest of the people; and this object can only be secured by intrusting them to those who are best qualified to perform the duties incident to them, and whose unimpeachable integrity commands the confidence of the community. It is a gross abuse of executive power to dispose of them for the mere purpose of rewarding partisan services, irrespective of superior qualifications, or of gratifying and providing for personal friends. There is little doubt that the errors of the Mayor in this case are to be attributed to a disregard of these fundamental distinctions. At the commencement of his administration he nominated as one of the Police Commissioners a personal friend and an associate of long standing, whom he has persistently sustained against all demonstrations of the public dissatisfaction, and at last in defiance of an adverse judicial decision. In regard to his reappointment and that of his associate Commissioner the Mayor's answer contains the remarkable admission that he intended by a renewed expression of his confidence to do "something to save these men from that appearance of disgrace, which they might otherwise wear in the eyes of the unreflecting crowd, when they had done nothing to merit it." In other words, it is an admission that he used the power of appointment intrusted to him for the proper administration of the public affairs, for the purpose of shielding the convicted Commissioners from the influence of the verdict of a jury of their countrymen and the sentence of the court. It is the more extraordinary as there are three indictments pending against them and soon to be tried; and it may be not unreasonably charged that the Mayor's indorsement of the integrity and the "unsurpassed energy and capacity" of one of the Commissioners may have been designed to forestall the judicial action, which the Grand Jury, after full consideration, deemed proper in the case.

A more ungenerous response to the confidence of the Legislature in conferring on him, at its last session, the sole power of appointment cannot well be conceived. It was intrusted to him because the Board of Aldermen had failed to confirm the nomination by him of two citizens of the most respectable character to the office of Police Commissioner. While the question of conferring this authority on him was pending, he protested in a written communication against it. And it is one of those examples of eccentricity, with which he has more than once surprised

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In this case there is no such public interest to be guarded. It is undeniable that the good name of the City has been tarnished, and the dignity of the office of its chief magistrate compromitted. But there is no imputation of corrupt motives to the Mayor, nor is it pretended that his removal is necessary to protect any public interest which will be imperiled by his continuance in office. In all his official action in regard to the financial concerns of the City, his course has not only been unexceptionable, but in the highest degree worthy of commendation. He has resisted all attempts to impose unjust and fraudulent claims on the public treasury; he has acted unitormity and earnestly on the side of economy, and in furtherance of the reform of those abuses under a former administration of the municipal affairs of the City, the exposure of which led to his election to office. In none of these respects has he been unfaithful to his constituents; nor have his appointments, with few exceptions, been objectionable, though not always, perhaps, made with the best judgment. His errors, grave as they are, belong to the class which are left to popular reproof more properly than to executive correction.

This view of the subject, as it affects the interests of the City, would not be complete without considering what consequences would follow his removal from the administration of his office, in its relation to the financial arrangements about to be made for the ensuing year. The Mayor is one of the four members of the Board of Estimate and Apportionment. The apportionment of taxes for the year 1875 is to be made before the 1st of November. If he were removed, the President of the Board of Aldermen would become acting Mayor, and his place in the Board of Apportionment would be filled by a new President to be elected by the Board of Aldermen, thus changing the organization of the Board of Apportionment by bringing in a new member, with the further consequence of placing two individuals in high and responsible official positions, for which, however capable and meritorious they may be, they were not intended by the people; and our experience has not been so satisfactory as to commend such substitutions to public favor. With the Mayor's known conservative views it would be greatly to be regretted that he should be removed from his position in the Board of Apportionment at the moment when the most important measure of the year, involving an appropriation of more than thirty millions of dollars—a measure which affects more nearly the interests of the taxpayers, and indeed of all classes of citizens than any other—is to be carefully canvassed, matured, and adopted.

Under all these circumstances, and in view of the public interests at stake, I deem it proper to decline any further proceeding in the case. In a few weeks the question of the nomination, and in less than two months the question of the election, of a successor to the Mayor will be presented to the people of the City. In the decision of these questions they will, either directly or indirectly, pass judgment on his official acts, and to them the whole subject may be safely left, with the assurance that the verdict will be such as the occasion demands, and in consonance with an unprejudiced sense of right toward him and toward themselves.

JOHN A. DIX.

his fellow-citizens, that, after protesting against the possession of a power, he should have proceeded, when it was conferred on him, to exercise it in such a manner as to make all who were instrumental in confiding it to him regret that his protest had been unheeded.

His anxiety to sustain his ancient associate has manifestly led him into devices utterly repugnant to his characteristic candor and directness of purpose. If he had been thoroughly convinced of the re-eligibility of the convicted commissioners to office, he would have appointed each to his own vacancy. In appointing one to the vacancy created by the other in each case he alleges "that this was done to evade no law, but with the view to prevent the making of any question as to the legality of the appointments." If there is an appreciable difference in the two branches of this proposition, it is believed that there will be found an insurmountable difficulty in logically defining it. It cannot be doubted that there was, in regard to the reappointment of the Commissioners, an indirectness of action unworthy of the character of its author—by the device of procuring their resignations before the executive could give notice that vacancies were caused by their conviction; of obtaining from a subordinate in the Law Department an opinion in favor of the legality of their reappointment; of assigning each to the vacancy created by the other, and of hastening the consummation of the act, after receiving the Governor's notice, without having recourse to the best authority to assure himself that he was not acting in violation of law. In all this, and in the reappointment of the convicted Commissioners while under indictment for other offenses, he offered an affront to public opinion and to the moral sense of the community which resulted, as might have been expected, in compelling them to abandon the posts in which they were thus indecently reinstated.

The neglect to institute an examination into the alleged misconduct of the Commissioners of Police, in compliance with his pledge to the Board of Aldermen, is not, in my opinion, justified by the reasons assigned. The testimony taken before Judge Donohue of the Supreme Court of the First Judicial District, disclosed gross irregularities in the appointment and removal of inspectors of election and in the exclusion of watchers from positions in which they could scrutinize the canvassing of votes. The examination was closed on the first of April, and the Mayor's letter engaging that "an investigation should be forthwith proceeded with" under his own supervision was dated on the 4th of June. Taken in connection with other transactions, his failure to redeem his pledge to the Aldermen gives color to the charge that he was reluctant to resort to any proceeding by which the conduct of his favored associate might become the subject of censure.

Throughout his answer the Mayor treats the charges against him as attacks by his political adversaries. The origin of accusations of this sort is of little moment. The only essential consideration is whether they are well-founded. It rarely happens that a party enters upon the correction of its errors or abuses until it is put in motion by the scourges of political opponents. The same observation is true, as a general rule, of public men. In this the Mayor is obviously under a delusion. Among those who are pressing his removal most earnestly are many by whom his election was most warmly advocated, and who, until a very recent day, were the most sincere and disinterested supporters of his administration.

It remains only to consider whether the facts disclosed are such as to justify the removal of Mayor Havemeyer from office. That the case comes within the power of removal confided to the Governor can hardly be disputed. The power is limited only by his discretion. It is not necessary, in order to warrant its exercise, that there should be any violation of law on the part of the officer against whom the charge of misconduct is brought. It would seem rather to have been designed by the Constitution for cases of abuse or malfeasance, in which no law had been infringed, and for which no legal redress had been provided. It is a high prerogative to be exercised only in the interest of the public, and not to punish official misconduct. The question in what manner the removal of an officer is likely to affect the department with which he is connected, or the administration over which he presides, enters of necessity into the consideration of every case. In that of the District Attorney of Kings County, it had been disclosed that a financial officer had appropriated to his own use a large amount of money in violation of law; and the removal was not only justified by the belief that the prosecuting officer had, from improper motives, failed to do his duty, but by the assurance that a successor might be appointed, who could protect the City from further depredation and call the offender to account. The result proved the correctness of these conclusions. The action of the new District Attorney led to the disclosure of a still larger defalcation, for which the defaulter is now under indictment.

In this case there is no such public interest to be guarded. It is undeniable that the good name of the City has been tarnished, and the dignity of the office of its chief magistrate compromitted. But there is no imputation of corrupt motives to the Mayor, nor is it pretended that his removal is necessary to protect any public interest which will be imperiled by his continuance in office. In all his official action in regard to the financial concerns of the City, his course has not only been unexceptionable, but in the highest degree worthy of commendation. He has resisted all attempts to impose unjust and fraudulent claims on the public treasury; he has acted unitormity and earnestly on the side of economy, and in furtherance of the reform of those abuses under a former administration of the municipal affairs of the City, the exposure of which led to his election to office. In none of these respects has he been unfaithful to his constituents; nor have his appointments, with few exceptions, been objectionable, though not always, perhaps, made with the best judgment. His errors, grave as