Thursday March 18th. 1858.

The Branch met pursuant to adjournment.

Present - James C. Armitage, Esq., President, and all the members.

The Session was opened with prayer by Mr. Thomas.

Mr. Thomas presented a petition from John Dwain and others, praying the passage of an ordinance to condemn and open Morris alley, from Fayette to Baltimore street, which was read and refered to the committee on highways.

Mr. Crowley moved to reconsider the vote by which bill No. 33, was recommitted to the committee on the harbor, which was agreed to.

The bill as amended, was then passed.

The President laid before the Branch the following communication from the city Counsellor, which was read and laid on the table:

Baltimore, March 14th. 1858.

To the Honorable
the Members of the Second Board of the City Council:

Gentlemen:

You desire to know "whether the Mayor or any of his subordinates officers have, under the new constitution, authority to appoint any bailiffs other than the constables now elected by the people under the provision of said Constitution."

The answer to this question will depend upon the inconsistency of the acts of Assembly and ordinances under which the officers named have heretofore been appointed, with the provision of the present constitution of the state.

The occasion of asking the question arose, perhaps, out of some doubt as to the operation of the 19th section of the 4th article of the constitution. In no place does this section expressly forbid the appointment of city bailiffs according to the old mode, or repeal the ordinances or statutes under which they are created. If, therefore, they are in any manner annulled, it must be because of their repugnancy to the constitution. But can any such repugnancy be shown? The section above refered to, provides for the election of constables in each ward of the city of Baltimore, prescribes the duration of their office, and leaves it to the legislature, from time to time, to increase or diminish their numbers; but bailiffs are not once named in the section, and it is not very apparent, why, because provision is made in the constitution for the election of constables, it should follow as a necessary consequence, that bailiffs are not to be appointed according to antecedent municipal regulations. These officers differ both in names and attributes; and there may be, as I apprehend there are, good reasons why, if the one should be elected in the constitutional mode, the others should be created by the city authorities, and be made

immediately and directly responsible to them. A short review of the status and ordinances appertaining to this subject, may, perhaps, elucidate and establish the view here taken.

By the first section of the act of 1812, chapter 184, the city is authorized "to appoint, during pleasure, not less than twenty five and not exceeding one hundred bailiffs, for the purpose of aiding in the preservation of the peace, the maintenance of the laws, and the advancement of the police and good government of said city."

By the second section of the city authorities are directed to prescribe the duties, designate the badges and weapons, and provide for the compensation of said bailiffs, in such manner as effectually to secure the important objects of their appointment.

In the third section of the act of 1812, chapter 188, it is provided, "that the number of bailiffs shall not be less than five; and that they shall perform all the duties of constables, &c.

The constabulatory duties here imposed upon them are somewhat lessened by the 7th section of ordinance No. 28, of the Revised Ordinances of 1850, which contains a provision "that they shall serve no precept in any civil process, except why the city is a party." This exception, I suppose, was inserted in the ordinance under the authority "to prescribe the duties" of bailiffs, conferred upon the corporation by the second section of the act of 1812.

In the exercise of the power vested in them by the above mentioned acts, the Mayor and City Council have, from time to time, passed many ordinances giving jurisdiction to the bailiffs and clothing them with authority, and requiring from them the performance of duties relating to a great variety of subjects touching "the good government of the city and the maintenance of its laws;" and although they possess almost full constabulatory powers, yet, as I conceive, they are not constables within the sense of that term in the way in which it is used in the 19, sec. of the constitution, nor is there anything in that section which takes from the corporation the power of appointing bailiffs or repeal the laws and ordinances prescribing their duties. I am of opinion, therefore, that neither the Mayor or any of his subordinates officers are prohibited, by the constitution from appointing bailiffs other than constables any more than if the amendment had never been made.

Very respectfully,
G. L. Dulaney,
City Counsellor.