Alderman Blagge's case. This gentleman was, by the unanimous suffrages of Montgomerie Ward, elected on the 29th of September last, as the Magistrate of that ward; and before his qualification, was appointed and sworn into the Office of Coroner for the City and County of New York ... [Signed] A citizen. New York. Feb. 12, 1773.

Alderman BLAGGE's CASE.

THIS Gentleman was, by the unanimous Suffrages of *Montgomerie Ward,* elected on the 29th of *September* last, as the Magistrate of that Ward; and before his Qualification, was appointed and sworn into the Office of Coroner for the City and County of *New-York.* After this he was on the usual Qualification-day sworn into his Office of Alderman and Justice of the Peace by the Mayor in Common Council: Since which he has continued to officiate as Alderman and Justice of the Peace for the Ward in which he was elected—Lately the Common Council have, by an Order under the City-Seal, declared his Offices of Alderman and Justice of the Peace *void and determined,* by his Acceptance of the Coronership; and yet, as tho' they were sensible of their Mistake in this Instance, and supposing themselves to have the Power of *Amoval,* they by the same Instrument *formally amove him* from those Offices; and award a new Election to be held on the 15th Instant.—How this Act of the Common Council can be justified the following Observations will enable the Public to determine.

It will not be denied that a Man may legally exercise two or more Offices, unless their Incompatibility prevent it. Offices may be said to be incompatible in two Senses: 1 ft. Where, from their respective Natures, it is impossible for one Man, when he cannot officiate by Deputation, to exercise both. 2dly. Where the Powers of one Office enable and require the Possessor to controul or punish the Acts done in the other. Of the latter Kind is the supposed Incompatibility of the Offices in Question. Had the Inquiry been about two Offices in the Appointment of the Crown to be exercised by one Person alone, it would perhaps be clear that an Acceptance of the last Appointment would, *ipso facto,* determine the first, and render any subsequent Act of Amoval wholly unnecessary. But in the present Case the Question is about one Office put upon Alderman *Blagge* by the Electors of *Montgomerie* Ward, in the ordinary Exercise of a very great Privilege conferred on them by the Royal Charter, and confirmed to them by a Law of the Colony; and another conferred by the Crown and voluntarily accepted by him.—To suppose that this Acceptance has discharged him from his Offices of Alderman and Justice of the Peace, is to suppose that the Crown has a Right, against its own Charter and an Act of Assembly, to enervate our City Privileges in the most essential Point; and that it is in the Power of one of the Servants of the City to discharge himself from those Duties, which his Electors have the most indubitable Right to exact of him. The Absurdity of this Supposition issufficient to explode it. The Crown being the Fountain of all executive Authority, there is no Doubt,

that with the Consent of his Officers, he may make what Changes in Office as appear best to him, *in Cases which only concern him and his Officers;* and this is clearly the Reason why an Appointment to a second Office by the Crown does on any real Incompatibility imply a Surrender or Re-asumption of the first. But this Reason does not apply to the Case of *Montgomerie* Ward:—Its Electors never consented to Mr. *Blagge'* s Appointment as Coroner—They have still a Right to his Services—A great Majority of them claim this Right—He cannot retract by paying his Fine because he has been sworn into their Service, and let the Incompatibility of the Offices be taken in the strongest Point of View against him; the Consequence can only be that his Appointment as Coroner is meerly nugatory and void. It is however far from being clear that the Offices are so incompatible as to be attended with this Consequence:—There are besides himself eight other Magistrates to correct and controul his Ministerial Acts in his Coronership. Justice may therefore be compleatly done, tho' he should continue to exercise both Offices.—A Failure of Justice is the Ground upon which the Incompatibility of Offices is built. Hence it would seem just to conclude, that when the Junction of two Offices in one Person does not work a Failure of Justice they are not incompatible, such is evidently the present Case. The

The Public therefore will naturally conclude, that notwithstanding his Acceptance of the Office of Coroner, Mr. *Blagge* is still lawful and rightful Alderman of *Montgomerie-Ward,* unless he has been lawfully and rightfully amoved from that Office by the Act of the Common Council. This Act I am informed, is founded on an implied Right *to amove,* which it may be admitted is incident to every Corporation, and which it is urged may be exercised against every Member who acts against the Duty of his Office or Franchise. Suppose both Positions to be true, it is nevertheless certain, that an Amotion must not only be actually made, but it must also be the Act of those who have a legal Right to do it, otherwise the Amotion must be void; and in that Case the Office being still full, there can be no Room for a new Election.

It highly concerns the Citizens to know whether the Right of Amotion, if such Right can be exercised in the present Case, belongs to them or to the Select Body of the Common Council. The Common Council have exercised it. If they have usurped the People's Right, Alderman *Blagge* is still their Magistrate, and tho' in that View the Act of the Common Council is a Nullity; yet the Usurpation being dangerous to our City Privileges ought to be firmly, tho' decently opposed and resented. This Act will appear more extraordinary in the Judgment of the Public, when they are informed that it is principally founded on a late Adjudication in 2d. *Burrow'* s Reports, p. 539. The Case there was of an Amotion and new Election by the proper Person authorised by the Borough Constitution of

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Ipswich to do the Acts, and therefore those Acts, had they been on just Grounds, would have been supported by the Adjudication of the Court. But in the Authority cited it appears clearly to have been the Opinion of the Court that in Cases of an implied Right to amove, as incident to the Corporation, the Power resides not in the select few, but in the Members or Electors at large. I thought it my Duty to furnish the Public with those Hints that the Electors of *Montgomerie* Ward may be prepared to conduct themselves properly upon so extraordinary and unprecedented an Occasion, as the intended Election for that Ward.

New-York, Feb. 12, 1773.

A CITIZEN.

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