

**Territorial Governors and Officers.**

**Opinion of U. S. Solicitor General Phillips, upon Gubernatorial Powers as to Removing or Suspending Territorial Officers.**

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DEPARTMENT OF JUSTICE,  
July 24th, 1874.

His Excellency, Edward M. McCormick, Governor of Colorado.

Sir:—In accordance with the direction of the Attorney-General, I have considered and herewith reply to the question put in your letter of the 6th inst. addressed to the President, *i. e.*: Whether, as Governor of Colorado, you possess the power to remove or suspend Territorial officers for cause, or under any circumstances. In this connection it is necessary to consider that public officers hold either (1) during good behavior, or (2) for a term of years, or (3) during pleasure. Even where they hold for a term there is an implied condition that they be of good behavior during the same, or otherwise be ousted before it expires.

In either of the cases first named "good behavior" is a question of law, to be decided by whatever tribunal has jurisdiction thereof. Ordinarily, the right of an incumbent to his office is a judicial question, and therefore is to be decided by a court. *Hoke vs. Henderson*, 4 Dev. 1.

Impliedly a Governor has no power to decide it. *Vail vs. Drapper*, 48 Mo. 213. Such power may be conferred upon him by an express provision of the law, *i. e.*, either by constitution or, where that is silent and consenting, by act of assembly.

In the third class, mentioned above, a power of removal at pleasure is vested in the officers or body vested with the power of appointment. This seems to be well established American constitutional law. *Story Const. sec. 1537. Ex parte Hennen*, 13 Peters 225; also *5 Sergeant and Rawle* 451, 24 Texas 253, 6 Caldwell 486, 44 Mississippi 352, Deady 204.

In general, therefore, the Governor of a Territory can remove only such officers as have been duly appointed by the Governor to hold at pleasure. He has no power to remove officers appointed during pleasure by others than the governor, unless the organic law, or, in some cases at least, the Territorial law, expressly so authorizes him. He cannot remove officers whose tenure is for a term of years, unless so authorized by the organic law or, in some cases, by the Territorial law.

I have looked through the organic and Territorial law of Colorado without being able to find that special powers of removing public officers are vested in the Governor.

The auditor and the treasurer, mentioned by you, are officers created by a Territorial statute, and appointed by the Governor with the consent of the Council, to hold for two years (Organic Act. s. 7 and Rev. Stat. 1867 ch. 9. s. 1). They are therefore not removable by the Governor.

I presume that the above statement of principles is all that is necessary to guide your Excellency and therefore will not detain you by a specific application of them to each of the officials of the Territory.

Very respectfully,  
Your obedient servant,  
(Signed) S. F. PHILLIPS,  
Solicitor General.

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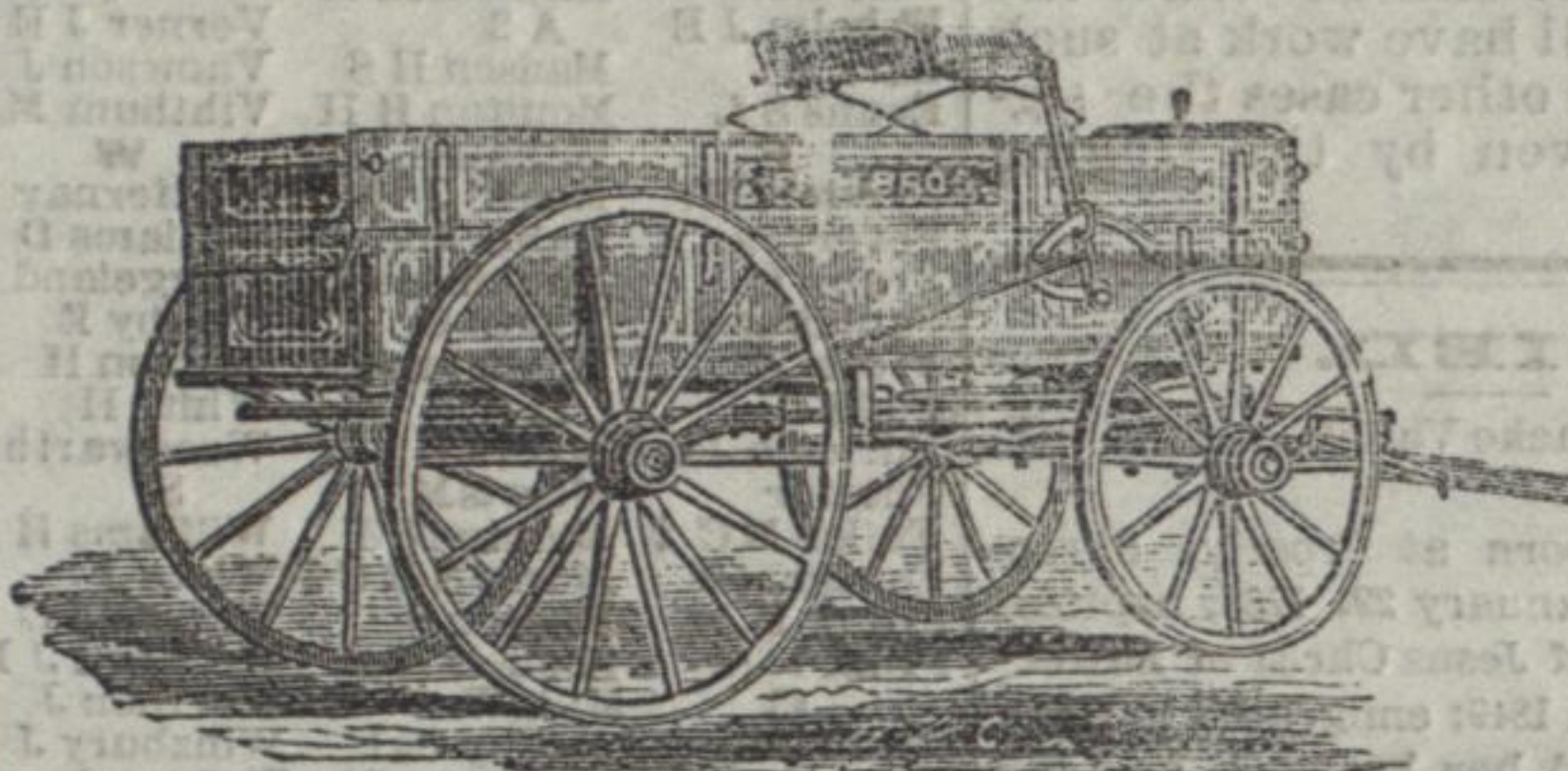
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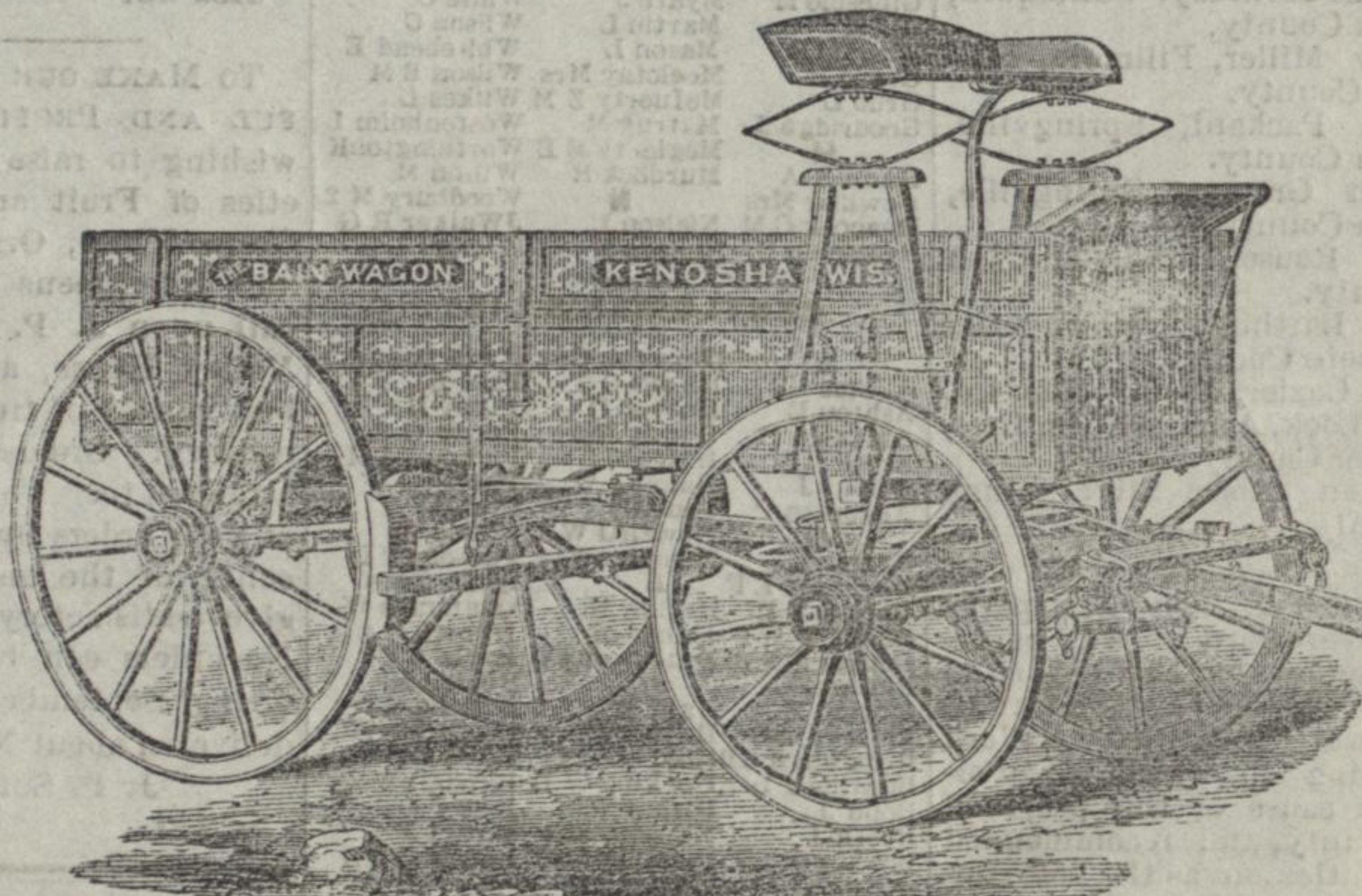
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