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FIFTY-SECOND YEAR

MONDAY, JANUARY 6, 1902. SALT LAKE CITY, UTAH.

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MISTORIAN'S OFFICE,

NEW CITY ADMINISTRATION IN, OLD ONE OUT LONG DEFENDS BLOODY SHIRT WAS BURNED. In the Change the Council Makes Its Third Effort to Elect a Presi-

Tell-Tale Garment Disposed of by Mortensen on His Return to His Home After Having Gone Out With Hay.

perfectly trustworthy source (alnot direct from any member Mortensen's family), that the on, as explained by Mrs. Mortenin her statement, for Mortensen ing the shirt which he wore on the ght young Hay was killed, as reportin Saturday evening's "News," is it it had blood stains on the bosom d on the sleeves.

When Mortensen came in, after being t about an hour and thirty minutestime when he had left the house th Hay-his coat was buttoned. A w minutes after his return he accommled Mrs. Henry Mortensen to her me, and came back to his own home about ten minutes. When he took off coat Mrs. Mortensen noticed the ood stains, and asked him about He explained that his nose had em. He explained that his nose had ed. This explanation was not accept-by Mrs. Mortensen, and seeing the old on his shirt, together with other cultarities in her husband's looks and dons, and the undefinable feeling of ad which had taken possession of , caused Mrs. Mortensen to accuse buyband of having committed some er, caused Mrs. Mortensen to some er husband of having committed some olent act against Mr, Hay, which lortensen denied. But he burned the childle shirt, saying that if anything ad happened to Hay and an inquiry ad happened to Hay and an inquiry ald be instituted, the possession of bloody shirt might be considered a us circumstance. And he further ked his wife, as has already been blished to say, if any inquiry should made, that he had been at home all evening.

BUSY WITH HIS BOOKS.

Secures a Change of Venue to Justice Nielsen's Court.

Peter Mortensen is still working on is books, and apparently the task he as imposed upon himself is not yet completed.

His place of confinement looks more His place of confinement books more to an office than a cell. He has books ad papers strewn all over the place of he is constantly at work on them, hatever the result is he expects to tain he appears perfectly confident. times he is cheerful and whistles y as he moves about the cell ex-

"News" has information from | few visitors now but from his manner one would infer that he preferred to be The time for his preliminary hearing has not been set as yet. The county attorney said this morning that it had

not been determined, and he could not say when the hearing would take place. say when the hearing would take place. Saturday evening Attorney Stewart, counsel for the accused, and the county attorney, had a long consultation over the case and Mr. Stewart said he would ask for a change of venue from Judge Diehl to Justice C. M. Nielson. The county authorities had no objection, and

the change was made. Saturday night Judge Diehl sent the papers over to Judge Nielson. This action does not signify that the

This action does not signify that the hearing will take place immediately, al-though it may. The change was taken faturday because it could not have been done today, for the reason that a change of venue cannot be taken from the new city court to a justice of the peace. Had the matter been left until today, the case would either have re-mained with Judge Diehl or transferred to Judge Tanner.

VISITED BY CONTRACTORS. Father Coming From California -

Lien on His Home. Mortensen, the alleged murderer, has been a very busy man today. In addi-tion to his work on his books and ao-

counts, he has had visits from sub-con-tractors, carpenters and plumbers who are doing work on jobs he undertook before his arrest. The work is now go-ing on under his direction, despite his imprisonment, and the many other ob-stacles in the way. His men call at the jail for instructions and they are per-

jail for instructions and they are per-mitted to see him. Mortensen learned today that his father was coming from San Francisco and would be with him before the end of the wek. This news seemed to cheer the man a great deal, and he expressed satisfaction over it. satisfaction over it

The knowledge that he is in danger The knowledge that he is in danger of losing his home does not seem to worry him in the least. Notice of a lifen on the place to secure a debt of \$553 for lumber furnished by the Pa-cific Lumber company, has been filed by the firm of Bachman & Whitaker. It is claimed this lumber was used in the construction of Mortensen's house, and that is the part of the \$3,500 debt. and that is the part of the \$3.500 debt, which the accused says he paid to James R. Hay on Monday night, De-

city administration changed [J. Davis and Fernstrom hands at noon today, and a new set of hands now encircle the municipal clock. However, all is not new, for some of the city officials succeed themselves; as for instance, the Mayor, treasurer, recorder, and city auditor; while City Attorney F. B. Stephens, Democrat, is succeeded by George L. Nye, Republican. The law establishing two city judges took effect January 1, and Judge Diehl will administer criminal law at

the old city hall stand, and Judge H. S.

Tanner will administer civil law in the

basement of the city and county build-

ing. City Recorder Nystrom has ap-pointed two deputies to serve as clerks of the city courts, viz., John L. May for the criminal, and Walter J. Meeks

for the civil courts. Eight City Councilmen retire, viz.,

President City Counclimen retire, viz., President George Buckle, First pre-cinct: George Canning and R. B. Whit-temore, Second precinct; Charles R. Howe and John B. Reid, Third precinct; E. A. Hartenstein and Edgar Howe, Fourth precinct, and Dr. T. B. Beatty, Fifth precinct.

The first session of the new City

The first session of the new City Council today was remarkable most for its brevity. A temporary chair-man was chosen, and a futile attempt was made to elect a president, but af-ter three ballots, as it was evident that a deadlock had been reached, an ad-

It is hard to forecast who will event-ually be chosen for president, but if the deadlock keeps up. It is not unlike-ly that the chances of Cottriel and Da-

vis will both fall before a compromise outsider. It may be Daveler, and there are even whispers that the Da-vis men, rather than see the plum fall

Supreme court so decided in a peremp-

tory writ of mandate which was issued

today. The writ was drawn by Justice

Baskin, and concurred in by Justice

The Supreme court construes the mean-

legislature in raising the salaries of

the state officers was not a "change"

This, holds the court, has never been done until the last legislature took the

matter up and passed a law authorizing the increase. But this being an accom-

office. This is the matter in a nutshell. The effect of the granting of the writ

by the Supreme court will be not only

The only question involved was whe-ther or no the law passed at the recent

session of the legislature should be construed so as to affect the incumbents

in office. The court holds that it does

on the reasoning that the salaries of

state officers have never yet been fixed. It prsumes that when the legislature by

enactments, either implied by or ex-

pressly, construes a provision of a stat-

The Opinion in Full.

Upon the petition of Heber M. Wells, Governor of the State, an alternative

writ of mandate was issued out of this court, directing the respondent, Charles

ex

enactment, either impliedly or

in full below:

Utah.

office.

journment was taken till evening.

Fifth precinct.

"The Better the Day the Better the Deed" Theory Not Sustained.

Council Present Their President With Handsome Gavel.

Deed" Theory Not sustained. The attempt of the Republican mem-bers-elect of the City Consoli to caucus in the Mayor's office yesterday after-noon was a dismal failure and only tended to widen the rift in the already badly broken lute. In fact, it be-came very evident as scon as Robert-son, Davis, Daveler and Vigus came into the room, that they were as firmly resolved not to yield the stand they had taken on Friday evening with rehad taken on Friday evening with re-gard to the seven of the eleven votes of the caucus constituting a majority vote. It becoming evident that no headway would be made, the four dissenters from the bare majority rule pulled out from the caucus and left the other seven to come to whatever con-clusion they should see fit, but making it plain that they washed their hands of the whole matter.

Left to themselves, the seven Cottrell Republicans called Eardley to the chair, and Cottrell being nominated, the other six pledged themselves to sup-portport his nomination at the first meeting of the new Council to be held at noon today.

to Cottrell would support the Demo-cratic candidate, Tuddenham. Davis, Spence, Tuddenham and Fernat noon today. The feature of yesterday's meeting was the scathing roast that Daveler gave Collector Callister. The new member from the Fifth, after calling J. N. Sharp, the secretary of the cau-cus, to the chair, lost no time in ex-pressing his opinion of the internal expressing his opinion of the internal strom were each nominated for tem-porary chairman. On the vote Da-veler and Tuddenham received five votes each, Spence four, and Fernstrom one. On the next Tuddenham Job-tained seven and Daveler six, and on matter of Potestean. the choice was might have made were of the head and not of the heart. The member from the Fourth theu presented President Buckle with the gavel which is a remarkably handsome one. It is made of a piece of ebony which was left over from the interior furnishing of the Temple, and is ela-borately mounted with gold. On a plate around the head of the gavel is an ap-properise inscription expressing the esrevenue collector, whom he scored se-verely for medding in local politics, being himself a federal officer. Presi-dent Roosevelt had emphatically statmotion of Robertson the choice was made unanimous, and Councilmen Cottrell and Fernstrom were appointed a ed that federal office holders should keep their hands off in local politics. Mr. Daveler was very bitter against the collector and referred to him as "that lean and hungry Cassins." He committee to conduct the temporary chairman to the chair. Councilman to the chair. Councilman Robertson then made the motion that the Council proceed to the business of electing a president of the Council. Hewlett opened the nomina-tions with the name of Charles Cottrell, telling every newspaper reporter he propriate inscription expressing the es-teem, etc., of the Council, and giving s with the name of Charles Cottrell, telling every newspaper reporter he teem, etc., of the Council, and g Robertson followed, nominating A. met that he (Daveler) had made a dis- the names of each of the members. Jr.

placed in graceful decision in ruling on Friday J. Davis and Fernstrom placed in nomination the temporary chairman, W. J. Tudenham, Three ballots were taken, none of which ave any one nominee the desired eight votes, and then, on motion of Robertson, an ad-journment was taken the 8 o'clock to-pressed himself that the collector was not only a meddler in matters which in no wise concerned him, but that he was also a faisifier Cottrell repuise that the Callister and

On the next ballot Tuddo ham switched his vote from Davis to honself, and this was the only change in the ballot, which remained the same on the third and last ballot-Cottrell 7, Davis 4, and Tuddenham 4. FAILURE NO. 2. mate.

Soon after this Eardley proposed that the Cottrell supporters hold a cau-cus of their own, which was done, as stated above.

GONE OUT PLEASANTLY.

Old City Council Can Now Laugh at the Troubles of Its Successor,

The closing session of the 1900-1901 Council took place between 11:30 and 11:45 this morning. All the members were present but Dr. Beatty, Canning and Whittemore. The minutes of the last meeting were read, and the retiring president was presented by the members of the out-going Council with a very handsome gavel, made of ebony and gold, and appropriately inscribed with the names of the Council over which George Buckle presided. Councilman Edgar Howe, was

first to be granted the privileges of the floor after the reading of the minutes, and made the presentation of the gave to the president of the retiring Council He expressed the regret he had in say ing good-bye to his colleagues of the retiring Council. He cleverly hit off a few of the more prominent characteris. tics of each of the members of the Council going out of office, and complimented President Buckle on the fair administration that he had always given. He said that any mistakes he might have made were of the head and

ion occurred and whose terms began

before the act was passed. No other

legislature appropriated money to

Constituion under consideration.

of construction, the court must

stalled after its enactment.

ton, in his opinion said:

act so as only to apply to and fix the

"I shall now conclude this opinion,

I could rest my opinion in favor of the

look the provisions of the constitution, and designed the act of 1871 to take ef-

question is involved.

NAVY DEPARTMENT

dent and Again Fails-Took Three Ballots and Adjourned Declares That Criticism That There Has Until Eight O'clock This Evening-Members of the Retiring Been Discrimination in Favor of Sampson and Against Schley is Not Just.

> Washington, Jan. 6 .- Secy. Long has | son for bounty at Santiago, the secreaddressed to Senator Knute Nelson of tary says that the distribution was made under a decree of the court of Minnesota, a long letter defending the havy department against what is declared to be unfriendly criticism in connection with the distribution of prize money and bounty. The letter is called forth by one from the senator asking for information on this point

for the use of a western newspaper. The secretary declares that the criticism that the department has discrminated in favor of Admiral Sampson and against Admiral Schley in the distribu-tion of prize money and bounty is un-just, because the department has no control over this matter; the money be-ing distributed from the treasury and all questions of law and fact relative to prize and bounty having been deter-

mined by the courts. The secretary calls attention to the laws touching prize and bounty as they existed at the beginning of the Spanish war, and says that, though advised by the attorney-general that it might make a distribution, the navy department preferred to place the matter in the court of claims, and so far from displaying favoritism, adopted the most effective means in its power to secure a just de-termination by courts of law of the rights of all concerned. Touching the claim of Admiral Samp- | settlement within the year.

made under a decree of the court of claims, which he cites, and from which no appeal was taken. He further points out that, under the prize laws, the com-mander-in-chief of the fact is entitled to his "one-twentieth" of bounty by virtue of his position as commander-in-chief, whether he is personally present during the comparement of the second during the engagement or not. Says the secretary

"As commander-in-chief, Admiral Sampson would, therefore, under the law have been entitled to his share of the bounty for the destruction of the Spanish ships at Santiago if he had been on the north shore of Cuba at the time. This was the law, for which the navy department is in nowise respon-sible." sible.

On this point the secretary says that the department itself was the first to realize the inequalities of this law and to make the recommendation which led to its repeal, so that "a rather amusing feature of the attacks made upon the navy department is that the adminis-tration is blamed more than two years after it had cured the evil." The secre-tary concludes his letter with an ex-tract from the report of the auditor of the treasury for the navy department showing the status of the prize money and bounty cases yet unsettled, owing to delays in the courts, and predicting a



[Special to the "News."]

Ogden, Jan. 6 .- The outgoing city council convened for the last time this morning with all members present with the exception of Councilman Parry, After disposing of all the business that was on hand the temporary bond of the council adjourned, sine die, J. P. O'Niel, the successful contractor

Contractor O'Niel were essentially the best presented and urged the adoption of this particular quality. Upon motion was adopted.

Poll Tax Collector A. G. Harris re-ported the receipt of \$4,908, rart in cash and part in work, during the year. After allowing a number of small bills

Immediately after the adjournment

amining different papers. He has but I cember 16th.



Washington, Jan. 6 .- The following prrespondence was made public at the White House today:

"Treasury Department, Washington, Dec. 19, 1901.

"The President: I respectfully submit this as my resignation of the high office of secretary of the treasury, the same to take effect upon the appointment of my successor.

"In this step toward separation from your executive staff, permit me to thank you for the confidence bestowed upon me and the kindness and courtesy of which I have been the recipient at your hands.

With most earnest desire for the highest success of your administration, I remain sincerely, "LYMAN J. GAGE."

"White House, Washington "Jan. 14, 1902.

'My Dear Mr. Secretary: accepting your resignation, I to express my great regret that

u feel it necessary to leave the cabi-t, and my hearty thanks for the induable services you have rendered. bur service to the nation has been adered at the cost of loss to youheavy loss, from a material standpoint, as must ever be the case with a man like you who deliberately abandons the comparative case and the high pecuniary rewards of a large private business for the exhausting work of the position you have so honorably filled during the last five years.

With all good wishes, believe me, most sincerely yours. "THEODORE ROOSEVELT." "To Hon. Lyman J. Gage."

"White House, Washington, "Jan. 4, 1902.

"My Dear Mr. Postmaster General: a with the most genuine regret "It is with the most genuine regret that I accept your resignation-after having value tried to prevent your sending it. During our four months close service together. I have grown not only to value most highly your trained ability and unswerving rectirained ability and unswerving rectiude of thought and purpose as a pubc man, but also to prize your personal riendship. I thank you for the great rlendshin. ervices you have rendered in your ofto serve side by side, and I carnestly wish you well in the future and bid you Godspeed In your new duties-for erever you may be, the weight of ir influence is sure to be potent on our Infine side of clean and honest government. Faithfully yours,

THEODORE ROOSEVELT. "To Postmaster General Smith."

The text of the letter of Postmaster-General Smith resigning his office was published at the time Mr. Smith re-Derrait.

LATE LOCALS.

President Joseph F. Smith received a letter today from Apostle Brigham Young who is still in Fruitland New Mexico, hui greatly improved in health.

There will be a civil service examina-tion in this city Feb. 11 next for the po-sition of hull draftsman in the Light House service, at the compensation of it per dec H per day.

county. He proposes to make things lively for the violators of the law. The Western Union Telegraph company is stringing new copper wire west of Laramie, and the men complain of the high winds which make it almost impossible to climb. poles. However, they do manage to get over ten to four-

teen miles a day even "in the teeth of the howling gale." This wire is part of the new through wire to Salt Lake City which was described some weeks ago in the "News."

P. J. MORAN FINED \$10.

Found Guilty of Violating the Sewer Ordinance.

In the criminal branch of the city court this afternoon, P. J. Moran was charged with violating the sewer ordinance by connecting a drain from Kearns' terrace with the sewer without first having secured permission from

the city engineer. Plumbing Inspector Leaker testified that Mr. Moran did the work and that

he did not have a permit to do so. Mr. Moran stated in his own behalf that he did not think a permit was necessary for the reason that the connection was made on the property be-longing to Senator Kearns, and that two other connections had been made

at some previous time. Under the testimony Judge Diehl found Mr. Moran gullty, but took occa-sion to say he believed the defendant acted in good faith. The court imposed a fine of \$10 and the defendant gave notice of an appeal.

SPRINCVILLE WATERSHED.

Rep. Sutherland Receives Petition and Maps for Forest Reserve of Same-

Introduces a Bill Granting a Pension To Mrs. Sartha G. Young, Mother Of John G. Young.

(Special to the "News.")

Washington, D. C., Jan. 6 .- Representative Sutherland has introduced a bill granting a pension at the rate of \$25 per month to Mrs. Martha G. Young, mother of John G. Young, Utah battery, who was killed in the Philippines.

Mr. Sutherland has received maps and petition for the establishment of rural free delivery service from Eureka to Knightsville and the mines near that city, which he has filed in the postoffice department.

A petition and maps for the establishment of a forest reserve upon the wa-tershed stream which supplies the city of Springville and also for setting aside the watershed on Spanish Fork river, have been received.

UTAH PENSIONS.

Etah Pensions-Original: War with Spain Elliot T. Kimball, Salt Lake City, \$6. Increase: James W. Camp-bell, Salt Lake C^{ens} \$18. Mexican war, increase: Elijah Thomas, Leeds, \$12.

WYOMING POSTMASTERS. Wyomi -- -- ostmasters appointed: Fe-Wyome - ostmasters appointed. Fe-lix, Crook Co., Josle Tantum, vice Fan-nie Foster, resigned: Parkman, Sheri-dan Co., Eimer T. Polly, vice Walter B. Shipton, resigned.

Fish Commissioner Sharp said today that in event of a favorable decision from the attorney-general he would probably seize the stock of fish in the local cold storage plants and hold them sell the same for the benefit of the Pennel Cherrington, assistant U. S.

NEW STATE SALARY LAW CONSTITUTIONAL

Upheld by Supreme Court in An Opinion Written by Justice Baskin and Concurred in by Justice Bartch and Acting Justice Morse-Governor Will Get \$4,000 a Year Hereafter Instead of \$2,000-Pay of Other Officers Also Increased.

Governor Wells will receive his in- | deliver to the relator, a warrant or | an appropriation of the sums neceswarrants for the unpaid balance of his crease of salary at the rate of \$4,000 insalary as Governor, alleged in the pe-tition to be due and unpaid, and for stead of \$2,000, from the state treasury as provided for by the last legislature. which the respondent refused to issue to the relator a state warrant. That is, he has arrears of salary amounting to \$750 coming to him. The

The respondent demurred to the petition and alternative writ on the ground that they failed to state facts sufficient to constitute a cause of acion or justify the issuance of a peremptory writ of mandate. It appears from the facts admitted

Bartch and District Judge Morse, sitby the demurrer that the relator was, at the general election in November, ting for Chief Justice Miner, who was 1900, duly elected Governor of the State. disqualified, did not sit in the case. and that the term for which he was so elected began on the first Monday ing of the constitution to be that the salaries of state officers were fixed only of Januar" 1901, and that upon that daw he duly qualified, entered upon the duties of his office and ever since has continued to discharge the duties until otherwise provided by the law. In other words that the action of the of the same; that at the time he was so elected and when he qualified and en-tered upon the duties of his office, the salary of the office of Governor was in the meaning of the word used in the constitution, which only intended the salaries fixed therein to be temporas fixed by Art. 7, sec. 20 of the Constiary salaries to stand until some state legislature should fix stated amounts. turion, which is, as follows:

"The governor, secretary of state, auditor, treasurer, attorney general, superintendent of public instruction, and such other state and district offl-cers as may be provided for by law, plished fact no legislature can hereaf-ter increase or decrease these salarels so as to effect the incumbents then in shall receive for their services quar-terly, a compensation as fixed by law, strue the act in accordance with the legislative intent, unless it is clear bewhich shall not be diminished or in-creased so as to affect the salary of yond reasonable doubt that the section of the Constitution quoted limits the any officer during his term, or the term next ensuing after the adoption of this 000 to \$4,000. The secretary will get \$2,000 instead of \$2,000, but the auditor will get constitution, unless a vacancy salaries of the officers elected and inoccut in which case, the successor of the for mer incumbent shall receive only such the auditor will get \$2,000 in-stead of \$1,500, the treasurer will get \$1,500 instead of \$1,000, the attorney-general will receive \$2,000 instead of \$1,500, and the superintendent of public salary as may be provided by law a the time of his election or appointment The compensation of the officers provided for by this article, until other wise provided by law, is fixed as fol-lows: Governor, two thousand dollars per annum, etc. That the salary of the governor, so fixed by said section of the instruction will draw \$1,800 instead of his present salary of \$1,500. in its commencement, that the question which I have been examining is inconstitution was not otherwise fixed by law during the term ensuing the adop constitutionality of the law on which this question arises, on no other ground than this doubt so felt and acknowltion of the constitution, but by an ac of the legislature, approved by the gov ernor on March 14, 1901, and which wen edged, that alone, would, in my estima-tion be a satisfactory vindication of it. into effect on the following May, the salary of the governor was fixed at It is but a decent respect due to the wisdom, the integrity, and the patriot-ism of the legislative body, by which \$4,000. That act in form is as follows: "An act fixing the salarles of certain state officers, and providing for payany law is passed, to presume in favor of its validity, until its violation of the ment thereof.

ute or a constitution in doubtful cases, the courts will accept the legislative "Be it enacted by the legislature of construction, and enforce the provision in accordance therewith, if the ambiguthe state of Utah:

"Section 1. Salaries of Certain Offi-cers Fixed-The annual salaries of the ous language of the opinion is such as to admit of such construction. following state officers are hereby fixed as follows: Governor, four thousand The opinion being a matter in which general interest will be taken through-out this and other states, is published dollars; secretary of state, three thousand dollars; state treasurer, fifteen hundred dollars; state auditor, two thousand dollars; attorney general, two thousand dollars; state superintendent of public instruction, eighteen hundred In the Supreme Court of the State of dollars.

Sec. 2. To be Paid Quarterly- The The State of Utah, ex relatione, Heber M. Wells, vs Charles S. Tingey, State Auditor, respondent. salaries of the state officers in section one specified, shall be paid quarterly, and the state auditor shall draw his warrant upon the state treasurer at the end of each uarter for the amount of salary due each of such officers." By an act approved March 26, 1901, S. Tingey, as state auditor, to draw and

in the paving bids for district No. 1, was approved. The sureties were J. L. Smythe, Patrick Healy, H. L. White and Joseph L. Car'son, who collectively went his bonds for the sum of \$77,101.14, the contract figures.

The mayor's report for the year was then read and approved. The document showed a marked improvement in the financial condition of the city and an advance generally all along the line for past two years that he has been in office.

The paving committee then reported that the samples of paving offered by

mony with the provisions of the consti-

tution. 'General words in the act should not "General words in the act should not be so construed as to give an effect to it beyond the legislative power, and thereby render the act unconstitution-al. But, if possible, a construction should be given to it that will render it free from constitutional objection, and the presumption must be that the legislature intended to grant such rights as were legitimately within its power. Again Sykes vs Mayor, etc., 55 sary to pay the annual salaries fixed by the said act of March 14, for the years 1901 and 1902, was made. Neither the validity nor the constitupower. Again Sykes vs Mayor, etc., 55 Miss., 115, 143: "It ought never to be assumed that the lawmaking depart-ment of the government intended to tionality of the act increasing the salaries is questioned. It is conceded that the act properly applies to and fixes the salaries of future incumbents of the ment of the government interaction is a surp or assume power prohibited to it. And such construction (if the words offices mentioned, but the parties disagree as to whether it can, under the provisions of section 20, article 7, be will admit of it) ought to be put on its legislation as will make it consistent legitimately applied so as to fix the salaries of the incumbents whose elecwith the supreme law."

Cooley's Const. Lam. 218 et seq. Black's Const. Law, sec. 28. Sutherland Stat. Const. sec. 229.

In Adams vs Howe, et al., 14 Mass 340, 345, it is said: "We must premise It is clear from the language of the act and from the fact that during the same term at which it was enacted, the that so much respect is due to any legislative act, solemnly passed, and ad-mitted into the statute book, that a the increased salary of the officers mentioned who had before the passage court of law, which may be called upon to decide its validity, will premise it to be constitutional, unless the contrary of said act, been elected, and were then serving the term for which they had clearly appears. So that in any case of the kind substantially doubtful, the been chosen, that the legislature in-tended the act to apply to and increase law would have its force. The legisla-ture is, in the first instance, the judge of its own constitutional powers; and it the salary of the officers then serv-ing their terms. This appropriation is, by implication, a legislative construc-tion of the act and the section of the is only when manifest assumption of authority, or misapprehension shall appear, that the judicial power being so, under the well settled rules will refuse to execute It. con-

When the legislature by enactments, either impliedly or expressly construes, a provision of a statute or a constitu-tion, in doubtful cases, the courts will accept the legislative construction and enforce the provision in accordance therewith, if the ambiguous language of the provision is such as admits of such construction.

In the case of Ogden vs Saunders, 12 Wheat, 213, 279, Mr. Justice Washing-Counsel for the respondent admitted Counsel for the respondent admitted in his argument that the legislature in-tended that the act should apply to the officers holding their term at the time it was passed, and that there is doubt whether, under the provisions of the constitution, it does not so apply. If, in that respect, a reasonable doubt colds, then under the established rules by repeating the acknowledgement which candor compelled me to make volved in difficulty and doubt. But if exists then, under the established rules of construction the intention of the

The construction the intention of the legislature should prevail. The contention of the respondent is unionable unless the term law, as used in the section of the Constitution referred to clearly includes the Constitution itself.

Although the term law, in its broadest sense, includes constitutions, it is clear, from its connection, in article 7, section 20, and other sec of the Constitution that it constitution is proved beyond all rea-sonable doubt. This has slways been the language of this court, when that subject has called for its decision." sections not used in its general sense, but mere-ly as a designation of statutory law.

The term law occurs in the sections of article 7, preceding section 20 of sala In Grenada County Supervisors va Brogden, 112 U. S. 268-9, it is said in the opinion delivered by Mr. Justice Har-lan that, "It certainly cannot be said article 7. preceding section 25 of and article sixteen times, and in each in-stance the term is used in the sense of statutory law. The term is also used in numerous other articles of the Conthat a different construction is re-quired by the obvious import of the stitution in the same sense. This is ap-parent from the connection in which that term is used in said section. words of the statue. But if there were room for two constructions, both equally obvious and reasonable, the court must, in deference to the legislature of the state, assume that it did not over-

It is provided in section 1, article 7, that officers of the executive depart-ment "Shall perform such duties as are

EX=Mayo Browning was overheard to make the following statement to Mr. Hendershott, one of the new councilmen: "Do you know, Mr. Hendershott, that I would not exchange my position today with Mr. Glasmann for his job and \$5,000 to boot." Mayor Glasmann called the new coun-

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cli to order in the city council chambers at 12:10 p. m. Every member was present After some preliminaries J. C. Nye

was elected temporary chairman, and then, upon the motion of Councilman Chambers, the rules and regulations used by the old council were temporarily adopted.

words used, brings the statute into har- | named should perform the duties therein prescribed. Sections 44 and 15 provide that "Un-

til otherwise provided by law" the officers therein mentioned shall perform

the duties therein prescribed. Ev secs. 16 17, 18 and 19, the secretary of state, attorney general, state auditor and superintendent of public in-struction are required to perform such duties as are therein expressly imposed upon each of them, and such other duties as may be prescribed by law. In these sections a distinction between statutory law and the constitution is plainly made.

The terms until otherwise provided by law, "as may be provided by law" and "as may be fixed by law," are frequently used both in the sections preceding and following sec. 20, and in all such instances it is plant that the all such instances it is plain that the term law refers only to enactments of the legislature. In the case of Merrill vs Spencer, 14

Utah 277, this court held that "A word used in a statute will be presumed to bear the same meaning throughout unless there is something to show that there is another meaning intended. The rule thus announced is also ap-plicable in construing a constitution.

We therefore must hold that the term law was used in section 20 in the same sense as in the other sections of the constitution, unless there is something which clearly shows that it was used in a different sense in said sec-

There is nothing in the constitution which shows such different use.

It follows that the provision of sec-tion 20 which prohibits the salary of any officer from being increased or di-minished during the term for which e is elected applies only to such salarles as the legislature shall by enactnent fix, and that the salaries fixed In said section, like many other pro-visional matters in the constitution, was intended to continue in force, only ntil otherwise provided by the act of

the legislature. It is evident that a change of those provisions, to which the terms "until otherwise provided by law" is applied, was left to the discretion of the legislature, and that they may be changed whenever the legislature chooses to exercise that discretion, except that af-ter the salary of any officer fixed by the Constitution is changed by the legislaure, it cannot thereafter again be changed so as to affect the salary of any officer during the term for which was elected

It is ordered that a peremptory writ, as prayed for by the relator, be issued, and that respondent pay the costs. We concur

BARTCH, J., C. W. MORSE, Dist. Judge, FOREST DALE INCORPORATED

Joseph W. Summerhays is President of the New Township.

Forest Dale was incorporated today, with Joseph W. Summerhays as presi-dent, and Royal B. Young. Pat Ryan, John M. Cannon and B. W. Ashton trustees. These officials will hold office until November, 1903. They furnished a \$500 bond each as follows: Ryan's hond by Young and Summerhays, Sum-merhays' by Ryan and Ashton, Young's by Ashton and Summerhays, Cannon's and designed the act of 1871 to take ef-fect. Our duty, therefore, is to adopt that construction which, without doing violence to the fair meaning of the wise provided by law" the officers of the fair meaning of the wise provided by law" the officers of the fair meaning of the section 13, provided by law" the officers of the fair meaning of the section 13, provided by law" the officers of the fair meaning of the section 13, provided by law" the officers of the fair meaning of the section 14, provided by law the officers of the fair meaning of the section 15, provided by law the officers of the fair meaning of the section 15, provided by law the officers of the fair meaning of the section 15, provided by law the officers of the fair meaning of the section 15, provided by law the officers of the fair meaning of the section 15, provided by law the officers of the fair meaning of the section 15, provided by law the officers of the fair meaning of the section 15, provided by law the officers of the fair meaning of the section 15, provided by law the officers the fair meaning of the section 15, provided by law the officers of the fair meaning of the section 15, provided by law the officers the fair meaning of the section 15, provided by law the officers the fair meaning of the section 15, provided by law the officers the fair meaning of the section 15, provided by law the officers the fair mean the fair meaning of the section 15, provided by law the officers the fair meaning of the section 15, provided by law the officers the fair meaning the fair meaning the fair meaning of the section 15, provided by law the officers the fair meaning the fair mean Ryan and Barlow Ferguson, and

