

announced its acceptance of franchise recently granted it. Received and filed.

#### THEY WANT IT ALL.

Houlahan and Griffith represented that they had laid certain sidewalks for the city and that the city engineer had ordered the retention of 10 per cent of the contract price for a period of five years. This they claimed was not according to agreement and asked that an investigation be made and that they be paid paid ten per cent. City engineer.

#### LAID ON THE TABLE.

County Clerk Allen reported that the county court had appointed a committee consisting of Selectmen Cahoon, Hardy and Butter, to investigate and report on the rights of Salt Lake county in and to the surplus water canal and asked that a similar committee be appointed by the Council. Laid on the table.

#### NOT ENTITLED TO PAY.

The committee on police, to whom was referred the claims of ex-Officers Sidney, Lang, Gates, Jensen and Lowery for services as policemen from date of discharge to date, recommended that the claims be not allowed, as these claimants have not performed any duty for the city since their discharge from the police force and are therefore not entitled to any remuneration.

The same committee also reported on the report of the committee on streets in relation to the employment of prison labor on streets and grading the same, and recommended that the subject be referred to the Incoming Council. Adopted.

#### FROM THE BOARD OF PUBLIC WORKS.

Superintendent Ryan recommended that a wagon bridge be built across the Jordan river at the intersection of Seventh South and Ninth West streets. Committee on streets.

The same body reported that the claims of Elias Morris and the Pacific Paving Company for sidewalk construction, were correct and recommended that they be paid. Adopted.

#### A LEGAL POINT INVOLVED.

The committee on irrigation as to the claim of F. Auerbach for damages on account of an overflow of water from the surplus canal, recommended that as the county is also interested, and there is a legal question involved in regard to damages, it be referred to the city attorney. So ordered.

#### A NEW DRIVEWAY.

The city engineer submitted an estimate of the cost of constructing a driveway into City Creek canyon from the Capitol grounds. The estimated cost is \$800. Report adopted and the work ordered done.

The committee on waterworks reported favorably on the petition of Henry H. Walters for an extension of water mains in the vicinity of First North and Fourth West streets; that a similar petition from R. E. Buttle and others for a service in the vicinity of Fifth South and Fourth West streets, be granted, and reported on the petitions of Charles E. Beers and others for an extension of water mains on Eighth and Ninth East streets, and recommended that the assessor and collector be instructed to collect the assessment, except that part of Eighth East street not properly opened. Adopted.

#### ADVERSE REPORT.

The committee on irrigation reported adversely on the claim of Peter C. Brixen for \$147.70 for damages alleged to have been sustained to the foundation walls of his house from the overflow of city water. Adopted.

#### STREET MATTERS.

The committee on streets reported on petition of John Connelly that he be required to pay \$1.57 per linear foot for sidewalk in front of his property in district No. 6; that the sidewalk to be laid by J. E. Dooly be accepted by the city in lieu of tax, \$218.50, which will be returned to him; that petition of H. B. Clawson for remission of taxes on an alley-way used as a public thoroughfare be granted; that the petitions of Frederick Heath and the Conklin Sampling Works be granted; that the petition of the Western Bill Posting Company be not granted, and that the bills of Elias Morris and Grant's Slagolithic Company for \$197.26 be paid. Adopted.

#### CORRECTLY ENROLLED.

The committee on enrollment reported that it had examined the record of the council proceedings during the period that Mr. Jack had occupied the office of city recorder, and found it correctly enrolled. Adopted.

#### WANT THEIR SALARIES.

The following was referred to the committee on municipal laws and city attorney associated:

Your petitioners respectfully represent that the Supreme court of this Territory has decided that your petitioners were duly elected as councilmen from the Third and Fourth municipal wards of this city at the late city election in 1890; that your petitioners were wrongfully deprived of their seats as such from said election until June 1891, during which time the compensation due your petitioners as such councilmen was wrongfully paid to others claiming to have been elected to said offices.

Believing that your petitioners are entitled to recover from the city their salaries as councilmen for and during the two years' term of their office, they respectfully ask that your honorable body direct the proper city officials to pay each of your petitioners the sum of \$500, less any amounts on account of said regular salary heretofore received by each of your petitioners.

Respectfully submitted,  
RICHARD W. YOUNG,  
J. FAWSON SMITH,  
ELI A. FOLLAND,  
WILLIAM J. TUDDENHAM,  
ORCAR H. HARDY,  
F. H. HYDE.

\$25 PER CAR.

A resolution was offered by Councilmen Hardy and Parsons providing for the payment of \$25 per car operated by the Rapid Transit Company, for the year 1892, into the city treasury. Adopted.

#### THE TAX QUESTION.

City Attorney Hall filed the following:

Gentlemen—In the matter of the communication of E. R. Clute, assessor and collector, asking to be relieved from the collection of certain taxes levied against Zion's Benefit and Building Association, and that the city attorney be instructed to commence suit for the recovery of the tax, I call your attention to sections 21, 22, 23 and 24 of chapter 23 of the Revised Ordinances of 1888.

Section 21. Whenever the collector

shall furnish satisfactory proof to the City Council that has exhausted all the taxable property, real and personal, of any delinquent taxpayer, the auditor shall credit the collector with the amount of the tax of such delinquent remaining unpaid.

Sec. 22. It shall be the duty of the auditor to keep an account with the assessor and collector, debiting him with the amount of tax assessed, and crediting him with the amount paid into the city treasury, the amount remitted and the compensation allowed him for his services.

Sec. 23. Whenever any tax is paid in full to the collector, he shall mark the word "paid" on the tax roll opposite the name of the taxpayer, and shall give a receipt therefor.

Sec. 24. On or before the 31st day of May in each year, the collector shall settle with the auditor and make full payments into the city treasury for all taxes due. If any tax shall remain unpaid to the collector on the said 31st day of May, the collector shall have, in his own individual right, a right of action, the same as on express contract for the direct payment or money against any such delinquent. And no property of such delinquent shall be exempt from execution on a judgment in such cases.

You will observe that these sections are substantially copied from the statutes of the Territory.

By section 21, whenever the collector shall furnish satisfactory proof to you that he has exhausted all the taxable property of the delinquent taxpayer, you may, by resolution or order, so find in his favor, and direct the auditor to credit the collector with the amount. In making the settlement, as provided in section 24, should you not find in favor of the collector, he would be charged with the amount in his settlement with the auditor, and have an action in his own behalf against the association for the amount of the taxes.

If you should determine this matter in favor of the collector, directing the auditor to give him credit for the amount of the taxes, I see no provision made by law or ordinance through which the amount of the taxes could be collected.

The rule of law is to well settled to admit of discussion, that no action can be maintained in a court of law for the collection of a tax, unless the law creating the tax provides such a remedy. That is in certain contingencies, viz, whenever the collector shall furnish satisfactory proof to the City Council that he has exhausted all the taxable property of any delinquent taxpayer be shall not be charged with the amount of such tax in his settlement with the auditor, and thereupon the city of Salt Lake should have a right of action for such taxes, the same as on an express contract for the direct payment of money against such delinquent taxpayer, and that no property of such delinquent should be exempt from execution, and that the statute of limitation should not run in favor of such delinquent.

In the action of George Crismon, assessor, etc., and Salt Lake county vs. Frederick Reich et al., the Supreme Court of the Territory in discussing the question say: Where there is no statute providing for suit to be brought for taxes no action can be maintained therefor. [2 Utah Rep. p. 111.]

Mr. Cooley, in his book on taxation, in discussing the question concludes as follows:

But in general, the conclusion has been reached that when the statute undertakes to provide remedies, and those given do not embrace an action at law, a common law action for the recovery of the tax as a debt will not lie. (Cooley on Taxation, Second Edition), pp. 15-16-17.