

In the first place it is not fair to convict the framers of the Constitution of 1867 of such want of knowledge of Constitutional law, and the force and weight to be attached to positive organic provisions. A positive, affirmative proposition or provision in the Constitution has all the force and effect of a negative proposition or provision. Constitutions more generally deal in affirmative positive propositions and provisions. The framers of the Constitution of 1867 must have understood this. Why, then, it will be asked, attach the provision that the salaries shall not be diminished during the continuance in office?

We will answer, that while it is not always an easy task to ascertain and give the true reason in a matter like this, it may have arisen in obedience to the principle contained in the legal term or phrase "*Ex abundantia cautela*," or from an abundance of caution.

It may have been regarded "as essential to the impartial administration of justice and a great security to the rights and liberties of the people," and "to the independency and uprightness of the Judges" that the assurance of these salaries, as "nominated in the bond," should be made doubly sure, certainly these ends could not be promoted by holding out to the Judiciary the inducement that having accepted an office for a fixed term, at a salary named, they, the Judges themselves, or their friends, at the very next session of the Legislature, or at any future session thereof, could make application for an increase thereof. If the salary can be increased at one session of the Legislature it may be further increased at another, and so on throughout the term of office, and while this increase may go on at successive sessions of the Legislature, if it is done in accordance with constitutional power, it can never be diminished. As to the matter of increase, if the salary is not fixed and determined by organic law, it rests altogether in the judgment, whims and caprice of every successive Legislature. This would be a most undesirable condition of things, and might affect seriously the independence and uprightness of the Judiciary. The use of the legal term or phrase "*Ex abundantia cautela*," in the law books indicates that constitutional and legal and contractual provisions are made where there exists actually no necessity for them.