

THE DEPOSITORY LAW

POINTS RAISED BY TREASURER MERVILLE PASSED UPON.

The State Supreme Court Hands Down an Opinion—A Decision that Will Give the State Treasurer Access to State Funds Hereafter Tied Up in State Depositories.

State Supreme Court Opinion.

Lincoln dispatch to the Omaha Bee: The supreme court has handed down a decision in the case submitted by State Treasurer Merville with reference to the depository law.

In re state treasurer's settlement. Original. Opinion by Judge Norval. The rule is well settled that where authority is conferred upon law by three or more persons to execute a public trust or agency and in the execution thereof all are assembled to deliberate or had notice or opportunity to be present, the act of a majority is binding, unless the statute expressly requires the concurrent action of all.

2. To constitute a bank a state depository of public funds it must give a bond for the safe-keeping and payment of such deposits and the account thereof, conditioned as required by law, and approved by the governor, secretary of state and attorney general or any two of them, where all were present and conferred upon the subject.

3. The depositing by a state treasurer of public funds in a state depository bank in excess of one-half of the amount of the penalty of the bond given by said bank will not have the effect to release either the principal or the sureties from their obligation to pay the moneys deposited to the amount of 50 per centum of the bond and the accretions thereof.

4. A deposit of public moneys by a state treasurer in a legally constituted depository for public funds, in compliance with the provisions of the depository law, is in substance and legal effect a loan of the money so deposited.

5. Public funds so deposited and remaining in a state depository at the termination of the office of a state treasurer, he is not required to withdraw therefrom and physically deliver the possession thereof to his successor in office.

6. The state depository law is not amendatory of subdivision viii, section 2, article iv, chapter lxxviii, compiled statutes, in such a sense as to render it inapplicable to section 11, article iii of the constitution.

This decision is expected to give the state treasurer access to a large part of the funds which were tied up till now in the state depository banks. While Treasurer Merville has not yet indicated to what extent he will take advantage of the decision, his policy as carried out up to this time has been to give the banks holding state money every possible opportunity to turn in the money without unnecessary inconvenience. It is possible he will ask the banks affected by the decision to give new depository bonds as security for the funds which they hold and attempt to draw the state's bill as needed for payment of the state's obligations. A great many of the depository banks have already given new bonds and had the funds in their custody redeposited by Treasurer Merville. It has also been decided by the state board, which approves the depository bonds, that no bond shall be accepted in greater amount than \$300,000, this with a view to keeping the deposit in any single bank below \$150,000.

The decision does not affect the shortage of Treasurer Bartley, which remains at \$327,000 and which consists of unaccounted for school money, together with the missing sinking fund appropriation.

Thummel for U. S. Marshal.

Washington special: The Nebraska republicans in congress, consisting of Senator Thurston and Congressmen Mercer and Strode, met this afternoon to settle a few questions at variance regarding the Nebraska patronage. The field was carefully gone over, and after a good deal of discussion it was decided to tender the United States marshalship to George H. Thummel of Grand Island.

This result has been foreshadowed ever since the marshalship passed under consideration, as Thummel was Senator Thurston's candidate, and in federal appointments custom yields precedence to him. It is said that the conference was harmonious and the best of feeling prevailed, and Thummel's candidacy is pointed out as an example of special fitness. But it is known that Representative Strode made a strong and earnest effort to secure the endorsement for Ed Sizer of Lincoln, and only yielded when he found it impossible to carry the conference for his candidate against Senator Thurston's choice.

New Mexico Will Be in Hand.

The news that New Mexico had made an appropriation for a state exhibit at the Trans-Mississippi exposition was received with a great deal of satisfaction. The appropriation, with what is assured from the several counties and large towns, will reach \$300,000 and will make New Mexico's exhibit one of the best among the states. Assurances are given that the various associations in New Mexico will unite in assisting in the movement to present the advantages of the state in the most attractive form. The vice-president of the exposition in New Mexico, ex-Gov. Prince, one of the strongest supporters of the exposition idea in the Trans-Mississippi congress, will be at the head of the commission of eight men to be appointed by the governor to arrange for the exhibit.

Frank Owens, night clerk at the Meridian hotel at Columbus, narrowly escaped being murdered the other morning. Owens was dozing in a chair when a man entered and struck him a terrific blow across the head with some instrument, knocking him out but not fracturing the skull. The man then tried open the cash drawer and took \$6.50 and fled.

The election contest of the Sutton High school for a representative in the north district county was won by Miss Ella Howe. A large number entered for the honor, displaying a high order of talent.

BALLOTS SEIZED.

Sergeant-at-Arms and a House Committee Take Possession.

Lincoln dispatch: The house of representatives is in possession of the ballots cast at the last November election on the propositions to amend the constitution of the state. At a few minutes before 7 on the evening of the 17th a committee of the house, with the sergeant-at-arms and his assistant, forced their way into the room where the members of the canvassing board were watching the ballot boxes, and the committee in the name of the legislature, took possession.

The members of the board protested, and they with two guards that had been on watch endeavored to prevent the sergeant-at-arms and the committee from carrying out their purpose. The six canvassers and their two guards were powerless to prevent the others from carrying out their plans and now the ballots are locked up in the big vault at the state house under watch of the sergeant-at-arms and his assistant.

The resolution authorizing the seizure of the ballots was presented to the house by Sheldon of Dawes county and was in this form:

"That the committee heretofore appointed to confer with a like committee from the senate relative to the recount of the ballots cast for the constitutional amendment be and is hereby authorized and empowered to at once proceed to the office of the secretary of state and in conjunction with him, the said secretary of state, take possession of and hold until further order of this house all the ballots, poll books, tally sheets, abstracts now in the possession of the said secretary, under and by virtue of an act to recount the ballots cast on the constitutional amendment relating to the judges of the supreme court and their term of office of November 3, 1896, to compare said ballots, declare the result and fix the penalty for violation of the provisions of this act, which act was passed by the Twenty-fifth session of the legislature and approved the 20th day of February, 1897. Said committee is hereby authorized, empowered and directed in case of resistance to summon to its aid the sergeant-at-arms of this house and to use all force necessary to gain possession and hold possession of said ballots, poll books, tally sheets and abstracts, until further order of this house."

Senator Deal introduced in the senate a resolution providing for the appointment of a committee of the senate to act with a like committee of the house to devise ways and means for carrying on the count which had been suspended under the injunction issued by the district court judge, C. L. Hall of Lancaster county. This resolution was adopted and the lieutenant governor appointed. Senators Deal, Mutz and Feltz on the committee. The respective committees held a conference which resulted in an agreement that the legislature must take possession of the ballots and conduct the count. No other plans were considered practicable, for all other plans left the canvassers exposed to the interference of the delays by the restraining orders obtained through the courts. Accordingly the poll boxes were taken possession of in the manner before stated. Gov. Holcomb, it is said, will present to each house a bill calling for a recount by a legislative committee. He will include a call for a recount of two more amendments, the amendment providing for the investment of the permanent school fund and another placing three railroad commissioners in the list of the elective officers. Further movements are looked forward to with a great deal of interest.

LATER.—There have been no exciting developments over the controversy regarding recount of the constitutional amendments. The ballots have remained in the fire proof vault in the office of the secretary of state. The doors of the room in which the vault is located are locked and the sergeant-at-arms of the house or one of his deputies is constantly on guard to ward off an anticipated attack. There will be a bill introduced in the house or senate providing for counting the ballots and declaring the result of the election on the proposition to adopt amendments to the constitution. The form and substance of this bill was agreed upon in a joint caucus of the fusion members of the house and senate. The caucus had before it a draft of a bill which had been prepared to meet the suggestions contained in the governor's message. The question of whether a bill or a joint resolution should be adopted was discussed at some length, and it was agreed that the latter would be best. It was agreed that the bill should provide that the ballots be taken charge of by a joint committee of four members of the house and three members of the senate and counted. It will provide that one republican from each house may be appointed. There is no limit as to the way in which the canvass is to be completed. It is provided that the act of February 20, 1897, be repealed and the members of the committee may employ as many clerks as may be necessary to do the work.

On Union Pacific Finances.

The statements of earnings and expenses of the Union Pacific for January, 1897, is the most encouraging monthly report that has been made by the system for a long time. Every branch of the system showed a healthy increase in its earnings, and the expenses of the main line and of the Oregon short line exhibited a marked decrease.

John Sawyer of Lincoln County has devoted a good deal of time to hunting and trapping this winter and has killed 574 muskrats, seventeen skunks, two coons, fifteen mink and several coyotes. By selling the furs he has made good wages.

Alfalfa Growing in Favor.

One of the most favorable signs of the improvement in agricultural matters in the vicinity of North Platte is the remarkable change that has taken place among farmers relative to alfalfa in the past two years. Its virtues as a forage plant are on every agricultural tongue and the better the farmer becomes acquainted with it the better it appears to be liked.

The Blair Courier thus announces the redemption of a fellow citizen: "Robert Carter is now a full-fledged man, without the demon, having obtained a sheepskin for sobriety."

AMENDMENT RECOUNT

IT IS RESTRAINED BY SECOND INJUNCTION.

Hands of the Commission Now Firmly Tied by the Court—Constitutionality of the Law to be Tested in the District Court of Lancaster County—Legislature Will Finish the Count.

A Second Injunction Issued.

A dispatch to the Omaha Bee says: Judge Hall this afternoon issued a second injunction restraining the members of the commission charged with the duty of recounting the amendment ballots from proceeding until the constitutionality of the law creating the commission and providing for the recount can be tested in the courts. The restraining order was served upon all members of the commission at the state house shortly before 3 o'clock, with the exception of Mr. Oberfelder, who was out of the city.

The effect of this second injunction is to tie the hands of the commission, as it is constituted at present, for an indefinite length of time. Attorney General Smyth said that the constitutionality of the law could not be tested within three months, at least. The restraining order issued this afternoon is in words following:

"This cause came on for hearing upon the application of the plaintiff for a temporary injunction against the defendants, Thomas C. Munger, Charles O. Wheeler, G. M. Lamberson and Roscoe Pound appeared as attorneys and counsel for the plaintiff and Constantine J. Smyth appeared for the defendants.

Thereupon the court, upon reading the petition and information of the plaintiff duly verified, and after hearing arguments of counsel for the plaintiff and defendants, and for good cause shown, it is ordered that a temporary order of injunction be granted herein restraining the defendants, William E. Porter, Joseph Oberfelder, C. J. Bowly, P. O. Hedlund, Frank M. Ross, George W. Blake and J. N. Campbell, and each of them from proceeding with the counting, inspection and canvassing the votes and declaring the result of the canvass of votes cast at the election on the 3d day of November, 1896, for and against an amendment to the constitution of the state of Nebraska relating to the number of judges of the supreme court and their term of office, which amendment was submitted to a vote of the people of the state of Nebraska on the 3d day of November, 1896, and prohibiting them and each of them from performing any acts and duties and exercising any powers conferred upon them under an act approved Feb. 27, 1897, by the twenty-fifth session of the legislature, entitled 'For an act to recount the ballots cast on the constitutional amendment relating to the judges of the supreme court and their term of office on Nov. 3, 1896, to compare said ballots, declare the result and fix penalty for the violation for the provisions of this act.'

And the said defendants are further enjoined, each of them, and as a canvassing board, from declaring the results of the counting and canvassing of the said votes cast at said election for and against said amendment and from handing over and delivering to any person or persons the ballots now in their possession cast at said election, or the abstracts, poll books or other papers and records in their custody or either of them. And the said defendants and each of them are commanded to keep said ballots, abstracts, poll books, records and papers in their custody and under their control until further order by this court.

This temporary order of injunction shall continue in force and effect until the court shall have heard the question and determined the constitutionality of the act of Feb. 20, 1897, under which respondents are acting and until the further order of the court, upon the plaintiff executing and delivering to the clerk of the courts an undertaking in the defendants in the sum of \$500, with approved sureties conditioned as required by law and service hereof upon the respondents.

South Sioux City is rejoicing that its star tough, John Reyson, is in jail across the river, and likely to serve a well-earned term in the penitentiary.

Madman at Large in the Town.

Decatur dispatch: Abe Hughs, a man who has thrice been sent to the Norfolk insane asylum in the last year and a half, came home last night carrying his valise. He walked in. Hughs is a dangerous man when under the influence of his insane fits and since he got back the town people are badly scared and many of them go armed. The last time he was captured he destroyed about \$100 worth of personal property before the officers could capture him. He has a wife and three little children living here.

Utah Makes an Appropriation.

Salt Lake City, Utah, dispatch: The general appropriation bill passed by the Utah legislature today carries an appropriation of \$8,000 for the Trans-Mississippi exposition. This amount will be largely increased by private subscriptions, many donations having already been promised.

The mine owners of the state are showing great interest in the subject and promise to make a magnificent exhibit of the mineral resources of the state.

Isaac Hupp of Boyd became violently insane as a result of religious excitement coupled with a bad case of la grippe.

Outlook Good for Crops.

The ground is full of moisture to the top, and all the draws and lagoons are full of water, says a Juniata dispatch. Winter wheat appears to have come through without killing much and no doubt will make a big crop. The low temperature has also prevented the fruit bud from swelling, and with a couple of weeks more of favorable weather, an enormous fruit crop may be expected.

It is expected that the Superior starch company will be reorganized with enough capital to go ahead and do business.

GENERAL THAYER ILL.

Suffers an Attack of the Grip and Taken to the Hospital.

Washington dispatch: Ex-Governor Thayer was taken ill yesterday at the Hotel Emrich with an attack of the grip. He immediately sent for Senator Allen to come to see him, and after consultation with physicians it was decided to remove the governor to Providence hospital where he could be better cared for than at a hotel, where there was no one to minister to him. The physicians state that while there is no cause for alarm in his condition, a tendency to bronchial fever may assert itself. Senator Allen at once wired the fact to the governor's son, John M. Thayer, jr., at Beatrice, Neb., and George D. Thayer at Cripple Creek, Colo., telling them that he would send word if a change for the worse occurred. The senator said that he thought the governor would pull through all right, and that there was no cause for alarm among his friends. He will see that the governor is well provided for until he recovers sufficiently to permit him to travel.

Allen on the Torrey Law.

Senator Allen has written the following letter to Frank D. Eager, chief clerk of the Nebraska house of representatives: I have the honor to acknowledge the receipt of the resolutions recently adopted by the Nebraska house of representatives respecting the passage of a bankruptcy law by congress, and in reply to say that I am decidedly in favor of a judicious voluntary bankruptcy law, but I cannot support such an act containing involuntary features, which will permit a creditor to ruthlessly push his debtor into bankruptcy and dissipate his property without affording him a full and fair opportunity to handle his own estate and realize the full value of his property for the payment of his debts. I am quite confident that the legislature of Nebraska does not desire me to support an act like the Torrey act, drawn altogether in the interest of the creditors of the country, and whose chief support comes from the Creditors' association. A careful examination of the Torrey bill will show it to be vicious throughout. Very truly yours, WILLIAM V. ALLEN.

Value of Broady's Services.

Lincoln dispatch: The jury in the case of Attorney Jefferson H. Broady against ex-State Treasurer John E. Hill handed in a verdict in favor of the plaintiff with interest amounting to \$133.33, and fixed the amount due to \$17. Broady sued for \$8,000, alleged to be a balance due him from Hill for services rendered in the defense of the case of the state against the ex-treasurer for \$236,000. The plaintiff claimed that his services in prosecuting the case in the district and supreme courts were of the value of \$10,000, and that he had as yet received but \$2,000. The plaintiff also alleged that he defended Hill in the impeachment proceedings brought by the state senate to oust him from the office of state treasurer. In both of these cases Mr. Broady obtained a verdict favorable to his client. Hill admitted the rendering of the services, but alleged that the sum of \$2,000 paid by him was a reasonable fee. Judge Hastings in instructing the jury gave it great scope in its decision, but the instructions seemed to favor the plaintiff.

Populists Get Good Seats.

Washington dispatch: In drawing for seats the populists in the house were infinitely more successful than the republicans, so far as Nebraska is concerned. Representative Green's was among the first fifty names called and he selected a place to the extreme left of the chamber, as did Messrs. Sutherland and Stark. Judge Maxwell lost three or four good seats by not taking advantage of his opportunity, but finally settled down in front of the speaker's desk in the same section with his colleagues. Dave Mercer's proverbial luck seemed to fail him on this occasion, his name not being called until far down the list, then he selected a seat on the far right. His associate, Judge Strode, also chose a seat on this side near the member from the Second.

Death in a Corn Bin.

The 13-year-old son of Peter Burgess met death in a strange manner on the cattle ranch of J. K. Baker, seven miles northwest of Shelton. A power feed-grinder is operated in a basement under a large granary containing several thousand bushels of shelled corn and is so arranged that the corn feeds itself into the grinder. Mr. Burgess, who had charge of the mill, noticed something wrong with the feeder, the corn failing to come down in the hopper as it should. Upon putting his hand up into the spout to learn the cause of the trouble, it came in contact with a shoe. Realizing that some one had fallen into the bin, help was called, and with an axe the side of the bin was broken in and young Burgess' body was found with life extinct.

District Court at Alnsworth.

Alnsworth dispatch: District court for Brown county convened today, with Judge Kinkaid on the bench. There is a large docket, but little of importance. The case of Flora Wanker against Link Rife was in court one year ago, Rife winning then; but a new trial was granted on the ground that the decision was not given according to the testimony. Rife is not present, no one knowing just where he is. The case will proceed without him.

Rock County's Big Fire.

Rock county's court house burned to the ground on the 16th. All books and most of the furniture was saved. The fire was started from a cook stove in the rooms occupied by Sheriff O. E. Smith. Loss about \$7,000; insurance, \$5,000.

A Washington dispatch says: Senator Allen introduced a bill today to amend an act to authorize and encourage the holding of a Trans-Mississippi and International Exposition at Omaha in 1898; but the introduction did not stop there, for by the time the clerk had exhausted the Allen bills, eighty-four measures had been proposed by the senior senator from Nebraska. Senator Thurston followed this up with fifty-five bills, all reintroductions from last session. Dave Mercer secured an early numbering for some twenty-four bills introduced late Monday afternoon, the exposition bill taking No. 4.

MUST AGREE ON MEN.

THE PRESIDENT WILL NOT UNDERTAKE TO DECIDE.

Senator Thurston and Nebraska Republican Congressmen Must Settle on Candidates for Public Position—Secretary Morton and the Exposition.

Washington special to the Lincoln Journal: Judge Strode called upon President McKinley and had a protracted interview with him relative to the appointment of Ed R. Sizer as marshal. Judge Strode informed the president that Mr. Sizer had the strongest and most comprehensive endorsements for the position from the state, including all the principal leaders in republican politics, and that as a staunch republican and organizer in the republican ranks he was entitled to the position. He recalled to Major McKinley the recollection of the times when he, the president, was in Lincoln, and when Mr. Sizer organized the parades. He stated to him that the best judgment of republicans in the state demanded Mr. Sizer's selection.

The president asked Judge Strode whether Senator Thurston was in favor of Mr. Sizer. The judge replied that he believed he was not and that there had been no consultation whatever by the Nebraska delegation at which an interchange of views could be had. President McKinley then said that such a meeting should be held, and that the delegation should come together and agree upon candidates for federal positions. He intimated to Judge Strode that he did not propose to decide between rival candidates, and that he desired that delegations should settle all differences between themselves before names were sent to the White house for his approval.

Representative Mercer was not present with Judge Strode at his interview with the president. He is thoroughly in touch with the representative from the First district upon the subject and will stand with him in demanding that appointments shall not be made by representatives shall not be made without consultation with those who had been directly elected by the people and to represent the wishes of the republican party. Both the Nebraska representatives have their war paint on and propose to make the best fight they can to secure the recognition which they feel they deserve.

The entire Nebraska congressional delegation is now in the city, Representatives Stark, Maxwell and Sutherland having completed by their arrival the list of members from our state.

THE EXPOSITION BILL.

One of the matters with which the Nebraska delegation will be obliged to wrestle in the coming session is the appropriation for the Trans-Mississippi exposition, which failed of passage by reason of the president's veto of the sundry civil bill. It took very earnest work on the part of all the representatives from the state in the house to secure recognition of this enterprise, and it will take vigorous work in the coming session to duplicate the results heretofore secured. It is not yet certain that the appropriation bills will be taken up until after the tariff has passed. There is talk of continuing the appropriations by resolution until congress meets in regular session in December. The earnest work of Representative Mercer, ably assisted by Representative Hainer, who was a member of the appropriations committee, and of Judge Strode and Representative Andrews, warded off opposition and paved the way for national recognition of the Trans-Mississippi exposition. There is a growing feeling in congress against appropriations for enterprises of this character and it is not likely that further appropriations will be made in years to come.

Appropos of this, ex-Secretary Morton, who is violently opposed to the appropriation of government funds for "shows," threatens to apply to the courts for an injunction against the expenditure by the state of Nebraska of any appropriation for the Trans-Mississippi exposition. He claims that such appropriations are in the nature of taxation of the people for the benefit of the few. Mr. Morton has written an article for a leading magazine in which he denounces, among other congressional extravaganzas, as he terms them, the appropriations made for the world's fair, and the Atlantic, Nashville and Trans-Mississippi expositions.

Representative Schram Dies.

C. W. Schram, representative from Dixon county, died at his home near Ponca on the 13th. He was a prominent Mason and was greatly esteemed by all who knew him.

C. W. Schram was born at Peekskill, N. Y., January 1, 1854. His mother died the following year and his father some years later. He was reared an orphan boy among strangers, acquiring his education in the long winter evenings by studying such books as happened to fall within his reach. He came to Nebraska in 1871 and herded cattle on the Platte bottoms for one year. He came to Dixon county the following year, and has resided there since, teaching school during the first several years up to 1890, since which nearly his whole time has been devoted to farming. He has been a supervisor since 1891 and had been nominated for election last fall, but having received the nomination at the populist convention for representative, he declined to be a candidate for supervisor. Later on in the fall the democrats met in convention and also took him up as their candidate.

Changes in Nebraska Banks.

Comptroller Eckels has been notified of changes in officials of national banks in Nebraska as follows: Merchants national, Nebraska City, H. N. Shewell, vice-president; R. O. Marnell, cashier, in place of H. N. Shewell; T. J. Hoeymer, assistant cashier, in place of R. O. Marnell. Commercial national, Omaha, R. F. Fagan, assistant cashier. South Omaha national, South Omaha, E. A. Cudahy, vice-president, in place of Truman Bank; First national, Arlington, E. Quesner, cashier, in place of William D. Badger, no assistant, cashier in place of E. Quesner.

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