# DEPOSITORY LAW DEFINED

Judge Norval Places an Authoritative Interpretation on the Statute.

GOVERNOR CROUNSE ON THE DECISION

How the Educational Funds Will Be Taken Care of Under the New Law-Treasurer Bartley Satisfied with the Outcome,

LINCOLN, Feb. 21 .- (Special to The Bee.) -A representative of The Bee called upon Governor Crounse this afternoon to get from him an expression of his opinion as to the effects of the decision of the supreme court regarding the interpretation of the state

"I will frankly say," replied the governor, "that I believe myself that the mere act of the state treasurer in depositing the educational funds of the state in banks subject to call at any moment constituted a loan or an investment within the meaning of the constitution. With that opinion 1 naturally bedeved that the law was a good one and one that should be enforced if the banks desiring the use of the fund would give a good and sufficient bond to indomnify the state. The supreme court has decided otherwise. There is only one thing that can be done now and that is to invest the educational funds in securities contemplated by the constitution and the statutes. This the Board of Educational Lands and Funds will do as rapidly as possible. There are many difficulties in the way of the rapid investment of funds. One is that private buyers have been more active. They send their agents to all parts of the state and bid on bonds or buy them before they can be offered to the state. Then, too, the state has generally desired a greater interest than private investors have exacted. The board has now concluded to buy bonds at as low a rate of interest as 412 per cent. We hope to be able to buy a great many bonds on the new basis."

"Why would it not be advisable for the board to designate an agent to travel over the state and be present when large blocks of bonds are offered for sale on a competi-'It would be well if such an agent could

be appointed or if some member of the board could do the work when necessary. But such a plan would necessitate a considerable expense which the board is not authorized t incur. I think it might be a good idea for the legislature to place a small contingent fund at the service of the beard in order to enable it to compete with its more active competitors. By so doing the state wonly undoubtedly save a great deal of interest, more than enough to compensate itself for the necessary outlay.

ABOUT STORING THE MONEY. "You have noticed, governor, that the opinion handed down by Chief Justice Norval states that there is nothing in the interpretation of the law given by the spareme court to prevent the legislature from enacting a law authorizing the state treasurer deposit the moneys belonging to the educa-tional funds in a bank or banks for safe keeping. Do you construe that to mean that the legislature can still pass another

law correcting the mistake evidently made in the original law?" "No. To me that part of the opinion means simply that the legislature may, if it sees fit, order the state treasurer to deposit he school fund in some designated bank but that he can not do so with the idea of collecting interest for the same for the use of the state. Or the legislature may proadditional safeguards for the funds by ordering the construction of perfectly secure vaults and safes for the storage of the money in the state house. I do not believe that under this decision the legislature can pass a law which will either directly or indirectly permit the investment of the school fund loaning them to banks as contemplated

"Have you heard that some of the Omaha banks had threatened to undertake to compel the state treasurer to keep the educa-tional funds in the state house?"

in the original law,"

have heard that such a plan had been talked of, but not from any authentic source of information. I do not believe any of the Omaha banks contemplate such a proceeding do not believe it would be advisable under the circumstances. The law and the constitution require the state treasurer to keep the funds, and it holds him alone responsible. Under previous decisions of the suprem lost by the act of the treasurer in deposit ing the same in a bank from the bank itself can only recover from the treasurer of his bondsmen. I believe the state treasure should be held responsible for state funds It seems to me that it should make no dif-ference to the banks or to any one else how he cares for the funds, providing the statis indemnified against loss. Of course, I say this in the light of the decision of yesterday. I would have much preferred to see the funds deposited in such a way that the state would receive the benefit of the interest. The constitution certainly needs to be amended on this score. The facilities for the proper investment of all idle funds belonging to the state should be increased. I can see no hope of further legislative action until the constitution is amended."

UPHELD MR. BARTLEY. Speaking of the decision this afternoor State Treasurer Bartley said to a Bee representative that the court simply adopted the view he had held from the very first. He was naturally gratified that his inter-pretation of the law had been confirmed by the supreme court, but added that had the decision been the other way he would have followed the law to the letter. "Under the interpretation of the law given

by the supreme court," said Mr. Bartley "from one-third to one-half of the money in the hands of the treasurer will be subject to the operation of the state depository law The funds that may be deposited under the law as outlined by the court are the general, sinking, insane and relief funds, the latter being practically a sinking fund. I shall keep these funds on deposit in the banks designated by the governor, secretary of state and attorney general. I feel convinced that the Board of Educational Lands and Funds will invest the idle money in the school funds as rapidly as favorable opporoffers. Under the new rule of the \$200,000 worth of Douglas county tunity offers. bonds have been purchased through a private agency within the past ten days. You have already noted the large purchase of Lancas-ter county bonds made some weeks ago." JUDGE NORVAL'S DECISION.

The full text of Chief Justice Norval's opinion, exclusive of the syllabus, which was published yesterday, is as follows: This is an application by the relator, the First National bank of Crete, for a per-emptory writ of mandamus to Joseph S. Bartley, state treasurer, to compel respond-ent to deposit with relator a portion of the moyeys in the state treasury, according to the requirements of the act passed by the state legislature of 1891, entitled: "An Act to Provide for the Depositing of State and County Funds in Banks."

The petition charges, in substance, that on the 9th day of January, 1894, the governor, attorney general and secretary of state in pursuance of the provisions of said act designated the First National bank of Crete as a state depository, and on said day sale bank executed and delivered a bond conditioned as required by said law, which bond and the surelies thereon, was duly ac cepted and approved by the proper officers that only three other banks have complied that only three other banks have complied with the provisions of said act of the legislature so as to entitle them to the deposit of state funus, and that the amount of the bonds furnished by each of said other banks was and is \$100,000, so that the aggregate amount which the respondent is authorized at any time to have on deposit in all of said banks pursuant to said act is \$150,000; that respondent has refused to deposit any that respondent has refused to deposit any of the moneys now in the state treasury with the relator, although requested so to do; that respondent at the time of such de-mand and refusal stated that all of the meneys belonging to the state which he be empowered by said act to deposit were already deposited in the said several banks except moneys belonging to the following funds: Sinking, relief, permanent school, temporary school, permanent university. Inbrary, agricultural college endowment, normal school endowment, temporary university,

The petition further charges that re-pondent refuses to deposit in relator's bank any of the moneys belonging to either of the above enumerated funds, although the amount his possession and belonging to any one of said funds, added to the amount on de-posit by said treasurer with the said other banks, exceeds in the aggregate the sum of \$150,000, and that the soic reason given by he respondent for his refusal to deposit I the bank of the relator any of the moneys in the above mentioned funds was and is that none of said moneys are "current funds" within the meaning of the said de-

INTENTION OF THE LEGISLATURE. The cause was submitted on a general decurrer to the petition. The first question in o the act above mentioned relating posit of public moneys in banks. Was it the intention of the legislature to require all moneys coming into the state treasury to be deposited, or only a certain portion

ections 1 and 2 of said act, chapter L. laws of 1891, are in these words; "Section 1. The state treasurer shall deposit, and at all times keep in deposit for safe keeping, in the state or national banks, or some of them doing business in the state, and of approved standing and responsibility, the amounts of money in his hands belonging to the severa current funds in the state irensury, and any such bank may apply for the privilege of keeping on deposit such funds or some par thereof; all such deposits shall be subject to payment when demanded by the state treas urer on his check, and all banks receiv ing and holding such deposits as aforesaid shall be required to pay, and shall pay to the state for the privilege of holding any such de posit, not less than 3 per cent per deposited, as herely efore provided, and subject also to regulations as are imposed by law and the rule adopted by the state treasurer for re-ceiving and holding such deposits.

"Section 2. The amount to be paid by any and all banks under the provisions of this act for the privilege of keeping public funds daily balances of the public moneys kept of deposit therewith, and shall be paid and redited to the state quarterly on the 1st days of January, April, July and October of require every such depository to keep separ as may be deposited, showing the name of the amounts and sums paid to the state for the privilege of keeping the same on dep-as aforesaid, and each of said funds spectively shall be credited directly to the posit, in proportion to the amount of such

By section 3, each bank designated as a epository under the act is required to give bond for the safe keeping and payment fall deposits and the accretions thereof, cor itioned that it will render each month to the state treasurer a statement, in duplicate howing the several daily balances, and the amount of state moneys held by it during the month, the amount of the accretions thereof, how credited separately, and for the payment of the deposit and the accretion ceruing thereon, upon the presentation o the check of the state treasurer, and als that such depository will faithfully discharge the trust and comply with the provisions of the act. The section further provides the form of the bond, names the officer which the same shall be deposited, and for bids the treasurer having on deposit in any bank at one time, moneys exceeding one half of the penalty of the bond.

FORBIDDEN TO MAKE A PROFIT. Section 4 provides that "The making of profit, directly or indirectly, by the state treasurer, out of any money in the state reasury belonging to the state, the custody of which the state trensurer is charged with by loaning, depositing or otherwise using it, or depositing the same in any manner, or removal by the state treasurer, or by his consent, of such moneys, or a part thereof, out of the vault of the treasurer's department, or any legal depository of the same except for the payment of warrants legally drawn or for the purpose of depositing the same in the banks selected as depositories under the provisions of this act, shall be deemed commission of felony and on convic-tion thereof shall be subjected to punishment in the state penitentiary for the term of not more than two years, or a fine not exceed-ing \$5,000, and shall also be liable under and upon his official bonds for all profits realized And it is hereby made the duty of the state treasurer to use all reasonable and proper means to secure to the state the best terms for the depositing of the money belonging to the state, consistent with the safe keeping and prompt payment of the funds of the

The next section prescrib s the penalty for the willful failure or refusal of the state treasurer to comply with the provisions of

Counsel for the relator insists that it is the duty of the state treasurer to keep on deposit in the several banks designated as lepositories all money received by him be nging to the state, while the respondent ontends that the moneys belonging to what commonly known as the "general fund, a fund created for the purpose of paying the salaries of the state officers and defraying he general expenses of the state govern-ment, are the only moneys to which the lepository act applies. The principal con-troversy in the case is as to the meaning of the term "several current funds," as used in the section first above quoted. The decisions of the courts of other states do not aid us in our investigation. In fact, we have been unable to find a law upon the statute book of any state, re-lating to the deposit of public moneys in banks, precisely like our own. In most of the states having a depository law, the treasurer is either required by ex press enactment to deposit all moneys that shall come into his hands, or else the statute specifically enumerates what funds shall be reposited in banks. Of course, the phrase current funds," as employed in commer-

cial transactions, has a fixed known signifi-cation. Thus, these words as used in notes or bank checks have been frequently defined by various courts as meaning current money lawful money, par funds, or money circula ing without any discount. See Galena Inting without any discount. See Galena In-surance company vs Kupfer, 28 Ill., 332; Wharton vs Morris, 1 U. S. 125; Hulbert vs Carver, 40 Barb., 245; Phoenix Insurance company vs Allen, 11 Mich., 591; American Emigrant company vs Clark, 47 Iowa, 671. DEFINING CURRENT FUNDS.

All will agree, we think, that the phrase 'current funds' was not employed by the legislature in enacting the statute under consideration in the same sense in which that term is used in commercial dealings. The same "current funds," like many other The same "current funds," like many other words in our language, is susceptible of more than one meaning. Where a word is employed in a contract or statute which has different meanings, the sense in which it is used is to be gathered from the context. It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute. In other words, a statute must receive such construction as will make all its parts harmonize with each other, and render them consistent with its general scope and object. Fullmer vs Nuckolis scope and object. Fullmer vs Nuckolls county, 6 Neb., 294; state ex rel Berry vs Babcock, 21 Id., 599. If we apply the foregoing rule in the interpretation of the law under consideration it is not a difficult task to ascertain the legislature's intent.
It should be remembered that the moneys which come into the state treasury from lime to time are, either by constitutional provision or legislative enactments, applicable to a variety of objects, and are divided into several separate and distinct funds, according to the sources from which they are derived and the uses to which the same may be devoted. We know at the time this law was enacted that there were several of these funds, each having a well understood and appropriate name, as the general fund. sinking fund, permanent school fund, and others which it is unnecessary to stop now to enumerate. It is obvious, therefore, that the words "several current funds" were em ployed by the legislature with reference to the various designations or divisions of the public moneys of the state. Manifestly, the construction placed upon the provisions of the statute by respondent's counsel is en-tirely too narrow and strained, and should not obtain. To adopt it would violate the rule above stated for the construction of stat-utes, which requires that some meaning, it possible, must be given to every word in the act, since the construction insisted upon cannot prevail unless we attach no meaning to the word "several" in the above phrase of the first section of the law. The statute declares that "the amounts of money in his hands belonging to the several current funds in the state treasury" shall be deposited. language was without doubt intended apply to more than one fund. This is anifest by the use of the plural of the word and" and the employment of the adjective several. It certainly could not have been coneys belonging to one fund alone should e kept on deposit with some designated epository. If they did, they were very unortunate in the use of language. Had it een the intention of the legislature that act should apply to a single fund, it is fair to assume that language, which could not be misunderstood, would have been em-

loyed to express such purpose.
But it is said that the word "current" in he connection in which it is used with the vord "funds" indicates that the moneys the law makers intended are raised by taxation and which are devoted to defraying the current expenses of the state government by disbursements from what is known as the general fund, and in the same onnection reference is made to the defini-ion of the word "current." In the Century Dictionary it is defined thus: "Running, noving, passing, present in its course, as current month or year." Other standard authorities give the word about the definition. Assuming that the word was employed by the legislature in the sense indicated, yet the interpretation conended for by respondent is not permissible. While the amount of money belonging to he general fund of the state is continually ing of the revenues derived from taxation into the treasury, and by their being dis It is likewise true that the amount n each of the other different funds in the constantly changing, as the records kept by the treasurer and auditor, respectively, will disclose, and of which public records this court is bound to take udicial notice CONCERNING COUNSEL'S CONTENTION.

We do not entertain a doubt as to the inking fund, relief fund, which is also a inking fund, and the permanent educations funds, the moneys in each of which, counsel renuously insists, are not "current funds within the meaning of the law. The sinking and relief funds, now aggregating about \$25,000, consist of moneys derived from taxes levied for the purpose of paying the interest on outstanding bonds issued by state, and for the purpose of paying the principal of said bonds when they become due. The moneys constituting these two funds are collected and paid into the treasury from time to time, precisely the same as the taxes are collected and paid into the general fund. The interest on one urer annually, and the other semi-annually The permanent school fund, permanent university, normal school endowment and sgricultural college endowment funds ute the permanent educational funds of the state. The permanent school fund is composed of the proceeds of the sale of land the state and of the redemption of nited States and state securities and ounty bonds belonging to said fund, and of scheated estates, and of a 5 per centum granted by congress on the sale of govern ient lands in the state. Each of the other ceds of lands which have been set apart the redemption of securities belonging to said funds respectively. Each of these several funds is continually augmented by oneys received from the sources indicated, nd the moneys therein are diminished from time to time by the making of investments for the benefit of said funds. Hence, the several educational funds are "current funds" in the sense in which that term is used in the law, if the moneys composing the general fund fall within the definition and all concede that the law applies to the fund last named. In the language of counsel for relator: "For the purpose of the business of a great state all 'funds are current funds so long as they remain on hand, or not invested.' Shall we by the use of jugglery of language extend the provisions of this law to the pittance of the genera fund, as we often find it, and deny them to the sacred trust funds of the state? These trust funds are current, in that they should have and in that they demand constant attention hourly, daily, all the time, looking to their profitable, permanent investment. These trust funds are current, moving and chang-

ing funds, increasing and diminishing." In respect to two of the other funds of the state treasury, the temporary school and temporary university, which aggregated at the close of the last year more than \$360,-000, it may be observed that the first of these is derived from a tax levied and colected at the same time as other state taxes for the support of the common schools of the state, together with the interest and rentals accruing from the sale and lease of school lands, and the interest received from the investment made for the benefit of the permanent school fund. The temporary university fund is supplied from a tax levied for the support of the state university, which is likewise paid at the same time other taxes the interest and rentals of lands belonging to the university endowment fund, sold and leased by the state, together with the interest on securities belonging to said fund and tuition fees. The moneys composing the temporary school and temporary university funds are paid into the state treasury as often as the moneys constituting any other fund of the state are paid in, and more frequently than the moneys belonging to the general fund. The moneys composing the temporary school fund are apportioned among the counties every six months, and are paid upon warrants upon the state treas-ury drawn by the auditor. The moneys be-longing to the temporary university fund are disbursed from time to time upon the auditor's warrants. Both of these are moving funds, so to speak, and the balances therein are constantly increasing and di-minishing.

SHOULD APPLY TO ALL STATE FUNDS. There is no word or provision in the act ve are discussing which directly in terms, or by fair implication, limits the operation thereof to the moneys of the state belonging to one fund more than another. On the con-trary, the subject matter of the act and the bylous scope and purpose of its provisions conclusively show it was the intention of the legislature that the statute should apply to all funds of the state alike. An examination of the provisions of the second and fourth sections of the law strengthens this conclusion. By the second section it is made the luty of every bank designated as a depository "to keep separate accounts of several funds of the state as may be deposited, shewing the name of the fund to which the same belongs and the amounts and sums paid to the state for the privilege of keeping he same on deposit as aforesaid, and to each f said funds respectively shall be credited lirectly the account of the fund or funds so held on deposit, in proportion to the amount of such fund as held." There is no imbiguity in this provision. Plainer lan-guage could not have been used. It shows hat the moneys in the several funds were o be deposited, and the depository should eep a separate account with each fund. cep a separate account with each fund. The fourth section, which we have quoted The fourth section, which we have quoted above, makes it the duty of the state treasurer to make every reasonable effort to secure to the state the best terms for the depositing of "the money belonging to the state," and it is also made a felony for such state," and it is also made a felony for such officer "to make profit out of any money in the state treasury belonging thereto, by loaning, depositing or otherwise using or disposing of it;" and the removal of such money or a part thereof, by the treasurer or with his consent, out of the vaults of the treasury, or any legal depository, except for the payment of warrants or for the purpose of depositing in the banks legally selected as depositories, is also deciared a felony.

Whether or not this section is legal and

Whether or not this section is legal and valid as a criminal statute is not now involved and will not be decided. Its consideration, however, tends to show the purpose and object of the legislature in enacting the law, and that the power of deposit all the moneys in the state treasury for the benefit of the state was meant to be conferred, and we think it has been, in plain terms so for erms so far as the legislature poss

IS THE ACT CONSTITUTIONAL? This brings us to the consideration of another question, and that is, whether the act which we have been considering is unconstitutional insofar as it requires the deconstitutional insofar as it requires the de-posit in banks of the moneys in the treasury belonging to the several educational funds of the state. Section 9 of article viii. of the constitution of Nebraska reads as follows: "All funds belonging to the state for educational purposes, the interest and income whereof only are to be used, shall be deemed trust funds held by the state, and the state shall supply all losses thereof that may in any manner accrue so that the

same shall remain forever inviolate and undiminished, and shall not be invested or loaned except on United States or state securities, or registered county bonds of this state; and such funds, with the interest and income thereof, are hereby solemnly pledged for the purposes for which they are granted and set apart, and shall not be transferred

The foregoing provision prohibits the loan-

The foregoing provision prohibits the loaning or investing of any moneys belonging to any of the permanent educational funds of the state "except on United States or state securities, or registered county bonds of this state." The moneys in these several funds the constitution has impressed with a trust character, and the legislature is powerless. character, and the legislature is powerless to authorize them to be devoted to any purpose not within the scope of the constitu-tional provision quoted. Does the statute attempt to authorize the loaning or investing of these trust funds? lator contend that it does not; that it merely requires their deposit temporarily for safe keeping, pending need for use or opportunity for permanent investment. This construc-tion would be a reasonable and proper on-If the deposit contemplated by the statute was a special one merely for safe keeping. and the same identical money should be re-turned. But this is not the kind of deposit the legislature meant. If it was, the purpose is not indicated in the title of the ict, since it makes no reference to the safe teeping of the funds deposited in banks, It is manifest from an examination of the entire act, that a general deposit of the funds was what the framers intended. True, the first section declares that "the treasurer shall deposit and at all times keep in deposit for safe keeping" in the banks that shall be designated as deposi-tories, the moneys in his hands belonging to the several current funds, subject to ment on the treasurer's check; but further along in the same section the bank receiv ing and keeping such deposit is required to pay the state not less than 3 per cent annum upon the amounts so deposited and the next section provides among other things, in substance, that the interest e computed on the average daily balances of the public moneys kept on deposit. While the statute mentions "safe keeping" when the several provisions are construed together t is quite clear that the transaction con-Who ever heard of that kind of i deposit of money being paid out on checks, or of a banking institution paying for the privilege of holding a special deposit of

The identical moneys deposited are not equired to be returned. Obviously the bank required to be returned. Obviously the bank receiving them had the right to use and control the money as its own. It could loan the funds for the purpose of earning the money with which to pay the stipulated the money with which to pay the adjuncted interest due the state. A deposit of state funds under the provisions of the law amounts to a loan or investment of the funds so deposited. As was said by Mr. Justice Miller in his opinion in Marine Bank vs Fulton Bank, 2 Wall, 256, "All deposits made with bankers may be divided into two classes, namely, those in which the bank comes bailee of the depositor, the to the thing deposited remaining with the latter; and the other kind of deposit of money peculiar to banking business, in which the depositor, for his own conenience, parts with the title to his money, and loans it to the banker, and the latter in consideration of the loan of the money and the right to use it for his own profit agrees to refund the same amount or any part thereof on demand." The decisions are juite uniform to the effect that where mor deposited in a bank is passed generally to the credit of the depositor, the relation of ebtor and creditor is thereby created and the transaction, although called a deposit, is nevertheless, in substance and legal effect, is nevertheless, in substance and legal effect, a loan, and this though it is payable on demand. Commercial bank of Albany vs Hughs, 17 Wend, 100; Perley vs County of Muskegan, 32 Mich., 132; State vs Executors of Bultles, 30 S. 309; Aetna National bank vs The Fourth National bank, 46 N. Y., 82; Lowry vs Polk county, 51 Iowa 50 Long vs Ensly, 57, 16, 11; in re Franklin bank, I. Paige, ch. 249; Wray vs Insurance Co., 34 La., 58; Bank vs Jones, 42 Pa. st., 536; Knecht vs U. S. Savings Ins., 2 Mo.

LAW OF DEPOSITS. In Foley vs Hill, 2 House of Lords case 28, Lord Chanceller Cottenham said, "Money, when paid into a bank, ceases altogether to be the money of the principal. It is then the money of the banker, who is bound to return an equivalent by paying a similar sum for it. The money paid into the bankers is noney loaned by the principal to be placed there for the purpose of being under the con-trol of the banker. It is then the banker's money; he is known to deal with it as his own, he makes what profit of it he can, which profit he retains for himself, paying back only the principal, according to the cus-tom of bankers in some places, or the principal and a small rate of interest, according to the custom of bankers in other places. The money placed in the custody of a banker is to all intents and purposes the money of the banker, to do with it as he pleases; he is guilty of no breach of trust in employing t; he is not answerable to the principal if he puts it into jeopardy; if he engages in a hazardous speculation he is not bound to keep it or deal with it as the property of his principal, but he is, of course, answerable for the amount because he has contracted. having received that money to repay to the principal, when demanded, a sum equivalent o that paid into his hands. That has been he subject of discussion in various cases, and that has been established to be the rela tive situation of banker and customer. That being established to be the relative situa-

tion of banker and customer, the banker is not an agent or factor, but he is a debtor." The Ohio case was this: The Ohio Canal Fund commissioners deposited with the Columbus Insurance company \$100,000 of the oney and funds of the state, belonging to the canal fund, and in consideration of which the company gave a bond, signed by various persons, to repay the same in two years with per cent interest thereon per annum, pay able annually. In an action by the state upon the bond, the court held that the advancement of the money to the insurance company was a loan, although the bond deiominated the receipt of the money as a de-

In State vs Keim, 8 Neb., 63, this court held that a deposit of the state money by a state treasurer in a bank, was a loan in its This case was cited with approval in First National bank vs Gandy, 11 It is uged that the Nebraska cases cited do

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existence which required the deposit of pub-lic funds in bank, while now the treasurer is ot only authorized to deposit them for safe eping, but he is expressly commanded to do so. We are unable to see the force of the argument. The fact that the legislature has nacted that the state moneys shall be dethe funds therein any less a loan, than aw. On the contrary, it would seem that the two cases decided by our own court are he more valuable as precedents for our now olding that such a transaction amounts in authorizes the deposit of public funds, and in every case of deposit, this statute enters nto and forms a part of the contract

that where the real estate of a married voman has been sold and the "secured or invested name or in the name of a trustee for her benefit the same shall \* \* \* no Hable to be taken on execution for th debts or liabilities of her husband." The supreme court of that state, in Jennings vi Davis, 31 Conn. 134, held that where the money received by the wife from the sale of her lands is deposited in her name bank it is invested within the meanithe statute. Sanford, J., in delivering opinion observes: "It is not stated whether the money was deposited in the bank for safe keeping merely, or in the character i loan to the bank for which a stipulated rate of interest was paid during its con thuance there; nor is it material to inquire because, in either case, the deposit (be ne) creates a debt in favor of the deposite and against the bank, and then the money ecame 'invested' in that debt, and bein thus invested in the name of Mrs. Mores house was protected by the statute against oxitor took any written evidence of this quire any particular species of evidence hat the investment has been made; it only requires that it shall be made in her name in the name of a trustee for her l ey loaned is 'invested' in a debt agains he borrower. If a promissory note is take e evidence of the investment and secure to the lender. If no note is taken the lebt against the borrower and in the ender's name MANIFEST INTENT OF THE LAW

The conclusion is irresistible that the amers of the law under review templated that the moneys deposited in puruance of the provisions thereof should be retained by the bank receiving the same for an indefinite period of time, and be used and loaned by it as its own, the bank so deposited on the presentation of the room for doubt that where money is deposited under this act, the bank receiving the same is not a bailee, which would be the case if the title to the money remains in the state after the same was received by the bank. Prior to the adoption of the no law authorizing or requiring the deposit generally understood that each of the former state treasurers had loaned the state fundvarious banking institutions of the state for their own pecaniary benefit. The state received no income from such use of its moneys and it was to remedy this that the provide for the safe keeping of the moneys belonging to the state treasury. The clear and manifest object of the statute was to nable the state to receive interest on its contemplated by the statute is as much a oan or investment of the moneys dep inder its provisions as where a bank loans ts moneys on the note of its customer; and f this law can be upheld, so far as it relates the depositing of the permanent educao prevent the legislature from enacting a authorizing the loaning of the edutional or trust funds to its citizens with or without security for the repayment thereof; and all will agree that such a law, if enacted, would contravene the section of

the constitution above quoted. But it is said that the constitution does not say that these educational funds shall not be temporarily deposited in bank until opportunity for their permanent investment is presented. That instrument in express terms forbids their being "loaned or invested" except in a certain manner, and, as we have already attempted to show, the depositing of these moneys in bank on an open account drawing interest, although deposited temporarily, constitutes a loan and investment of the money. The fact that a person borrows money for an indefinite period, payable on demand of the lender, does not make the transaction any the less a loan than if the money had been taken for a fixed long period of time. The same is equally true as regards the depositing of money in bank. The length of time the money is left does not determine whether

the transaction is a loan or not.

We are satisfied both from reason and ipon authority that the depositing of the moneys belonging to the permanent educational fund of the state in banks under the provisions of the depository law is, in effect a loan and investment of the funds so deposited, and is, therefore, inhibited by the constitution. We do not wish to be understood as in the least intimating that the egislature is powerless to enact a law re-pairing the state treasurer to deposit the neys belonging to these funds in a bank banks for safe keeping merely. it has the power, but such is not the scope and effect of the law before us, since it re-quires a general deposit of the funds, and not a special deposit where the identical moneys deposited are to be returned.

HINT TO STATE OFFICERS.

The amount of uninvested moneys be onging to the several permanent educa-ional funds of the state is large, and opportunities for the permanent investment these moneys in the class of securities and bonds described in the constitution are daily becoming less frequent, so that the amount in the treasury belonging to these trusts is constantly increasing. That they should be invested so that they will wield an income to the state no one will deny. But the remedy in part, at least, must come through an amendment to the constitution. The courts cannot, under the guise of interpretation, extend the powers conferred by the constitution beyond the scope of its pre-We have not considered, nor do we now

not apply to the questions here at issue. We have not considered, nor do we now since at the time they arose no law was in

interest as entitles it to maintain the action, since its right to do so has not been raised nor argued by counsel. As the state at large directly interested in the enforcement the depository law, the attorney general could, and doubtless it is his duty to insti-tute proceedings to compel the depositing of the funds in the banks designated as deositories, and perhaps a bank which has omplied with the law might do so, at least n case the attorney general should refuse o appear and file the aplication. As it is important to the public interests that the nid be determined and set at rest, we have thought it necessary to pass upon the merits of the case, without going into the mestion of who should have instituted the Connecticut has a statute which declares

follows from the views expressed in the above opinion that the demurrer to the application should be overruled, and a peremptory writ of mandamus allowed.

## ANSWER OF MR. MEIKLEJOHN.

Describes the Famons Wisconsin Interview

Between Dr. Keenan and Himself

The long fought and somewhat sensational case wherein Catherine M. Tuster and her brother, Dr. Keenan of Madison, Wis., are arrayed against Henry P. Stoddard and William E. Healey of this city, has been given another turning over in the courts of this county by the filing of an affidavit of Congressman George D. Melklejohn of the Third congressional district of this state.

Some years ago the suit was incubated, but it has never been tried in the courts, though half a dozen knockdowns have re-

though half a dozen knockdowns have resulted from the charges which have been made in petitions, answers and other filings. As the story goes Mrs. Tusler came into ossession of a runch and a bunch of stock in the western part of the state. This ossession came about through the death of her husband, which occurred some years ago. After the death of Tusier, Dr. Keenan was entrusted with the affairs of the estate. while a foreman named Nelson had the care of the property on the ranch. For a time all went well, but eventually complaints were made against Keenan and Mr. Healey was employed to take the matter from his hands. This was the first outbreak, and the next came a few months later when Healey and Meiklejohn went down to Mailisen for the purpose of adjusting the matters of difference. At that time there was a pugllistic encounter and the two Nebraska men came back considerable the worse for

dayit in the clerk's office, and therein ho tells how the whole trouble occurred. He alleges also that during the fall of 1821 he was employed by Mrs. Tuster to go down to so that they would be satisfactory arties concerned. With Lawyer Heale, e journeyed to the Wisconsin town, when e was introduced to Keenan. The meeting as in a drug store, and an soon as the time of day had been passed the congressman avera that Keenan went to the back end of the store, where he armed himself with a heavy cane. Returning to the front of the exclaimed, "G-d d-n you, I'll kill you." Suiting the action to the words, he com-menced to beat Healey over the head. nocking him down, after which he turned is attention to the deponent, striking and beating him until outsiders interfered.

After the battle there were injunction estraining the Omaha parties from interfering with the management of the ranch sin parties from doing the same. In this condition matters now stand, waiting for the case to be called for a final hearing.

Marriage Licenses. The following marriage licenses were is med yesterday:

Name and Address tenry Sass, Gretna, Neb..... Dora Rapp, Gretna, Neb... Charles King, Percival, Ia. Minnie M. Paddock, Perciv F. J. Yorkel, South Omaha... M. E. Long, South Omaha...



# KNOWLEDGE

Brings comfort and improvement and tends to personal enjoyment when rightly used. The many, who live bet-ter than others and enjoy life more, with less expenditure, by more promptly adapting the world's best products to the needs of physical being, will attest the value to health of the pure liquid laxative principles embraced in the remedy, Syrup of Figs.

Its excellence is due to its presenting in the form most acceptable and pleasant to the taste, the refreshing and truly beneficial properties of a perfect laxative; effectually cleansing the system, dispelling colds, hendaches and fevers and permanently curing constipation. It has given satisfaction to millions and met with the approval of the medical profession, because it acts on the Kidneys, Liver and Bowels without weakening them and it is perfectly free from every objectionable substance. Syrup of Figs is for sale by all drug-

gists in 50c and \$1 bottles, but it is manufactured by the California Fig Syrup Co. only, whose name is printed on every package, also the name, Syrup of Figs and being well informed, you will not accept any substitute if offered.

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DANGER JUST AHEAD. A Prominent Professor Speaks About the Time of the Year.

Threatening Things Abroad at This "It is surpristing how many people are suf-

fering today from so-called coughs, colds and The remark was made by a very prominent professor connected with one of the leading New York hospitals. Continuing he said;

"It is not these things that are troubling people, but it is an advanced form of our old enemy, the rip. People feel out of sorts, sneeze, have p ins in the muse es and bones, have no appetite, lose all interest in the world and wonder what is the matter. It is the gript "Now, all such symptoms need to have

prompt treatment. The attack must be met and fenciled at cace, or it is cert in to run into something servors. I know of but one way to certainly account these tradities which

# NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY

Post Office quare, Boston, Mass.

Sintement of Business for 1893. Not Ledger Assets, Jan. 1, 1803 .... 821 [ .... 821.] 1.118.100.24

> \$4,160,171.07 825,312,518,65

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chased during the 14,033,61 3,457,654.13 Net Ledger Assets Dec 31, 1893, 5. Market value of Se-curit sover Led-ger Cost 22,384,864.52 390.975.84

ger Cost interest and Reads accrued Dec 31, 1893. Set premiums in course of collec-tion. 251.342.05 Assets, Dec. 823,204,162 58

LIACILITIES. \$21,244,871,21 4 per cent alance of Distribu-112,749.14 ment Claims ap-179.907.00 21.537.527.35

\$1,000,035 23 Every Policy has indersed thereon the cash sur-render and paid-up insurance values to which the insured is continued by the Massischusetts statute—LIFE HATE ENDOWMENT Politics are issued at the old life rate premium,—ANNUAL CASH distributions are paid upon ALL policies. Pumpblets, rates and values for any age sent on

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The regular annual meeting of the stock-holders of The Rec Publishing Company will be held at their office, in the Bec building, on Monday, March 5, 186, at 4 o clock p. m., for the purpose of electing a board of directors and officers for the ensuing year. Also such other business as may come up for consideration. By order of the president.

GEORGE B. TZSCHTUCK.

Secretary.

Omaha, February 2t, 1894. Film&cM8