

THE AMERICAN.

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THE AMERICAN PUBLISHING COMPANY, JOHN C. THOMPSON, Editor.

OMAHA, FRIDAY, FEB. 17, 1893.

THE AMERICAN IS THE CHAMPION OF ALL PARTISAN CAUSES—THE ORGAN OF NONE.

A FEW FACTS.

Thursday evening of last week the Bee published a lengthy article in justification of Chief Seavey's action in placing the Protestant police officers on the beats in the outskirts of the city...

The article was so manifestly unfair in its reference to the Protestant policemen that THE AMERICAN will set forth a few facts in the hope of counteracting any false impression which might be formed from reading the article in our contemporary.

In the first place it states that a demand was made upon Chief Seavey that he discharge Officer Sullivan for arresting a young man named Thompson—a deputy sheriff—"the brother of a leader of the American Protective Association," for carrying concealed weapons, while employed as a detective upon the Miller case.

The plea that Sullivan is kept in the Third ward on account of his efficiency will go down with all who are glib enough to swallow it—it will not go down with some other people.

In another place the article says most of the American Protective Association members are new men yet they want to be placed in the centre of the city. Let us admit, for the sake of argument, that this is so.

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asked some citizens who were there if the saloonkeeper had fired the shot, and they said he had. I went in and got him with his revolver and led him down to the patrol box.

Before I rang up the station the bartender denied that the saloonkeeper had shot at him. I saw there was something that ought to be investigated.

Here was a man who said in one breath that he had been shot at by this man, and in the next that he had not. I had not seen any shot fired so had to rely on what I was told.

Under the circumstances I either had to send him up as a plain drunk, or call for a sergeant to come and investigate the case.

I thought the latter was the best thing to do so asked Sargeant Sigwart to come up and investigate the case.

After I had turned in the call—nothing was said about the wagon—the saloonkeeper admitted he fired the shot, and when the sergeant arrived he had nothing to do.

The saloonkeeper did not flourish his revolver, I went in the saloon and took him in charge. There is a rule which requires patrolmen to call for a sergeant when a case is complicated.

That rule does not state the degree of complication and as long as I am on the force and similar cases occur, I shall call for a sergeant.

That is part of their duties. If the Bee wants to know how near true my story is it can find out by asking Block Watchman Bradley.

He saw the whole affair. Our contemporary also published a lot of stuff about G. M. D. Graves which contained no truth whatever.

It recanted Tuesday night of this week. Sargeant Graves told us all that the Bee published Tuesday evening and much more that will not be published unless this fight on the A. P. A. is continued.

When that he would not be there for duty and had secured a substitute. We are informed that the chief took Hunt, the reporter for the World-Herald, to look Seavey he did not publish the report he submitted to the board against Ish, and remarked, when asked why he wanted it published, that he wanted to give Ish a little notoriety.

Has it come to this that the columns of the daily press are supposed to be open to a petty official that he may assail the heaviest tax-payers in the city simply to gratify a personal spite?

If this is so, Americans, you should and must have a daily of your own. Probably you cannot afford to agree to buy stock in a daily paper but there are 1000 men and women who read the weekly AMERICAN who can afford to, and we ask them in the name of their rights, their liberties, how much farther will they allow Rome to encroach before they risk a few hundred dollars to perpetuate this government and to preserve their liberties.

One friend has pledged himself for \$500 worth of stock in the daily if it is started. How much will you take? It matters not where you live, you can subscribe for any number of shares under the plan published elsewhere in this issue.

THOSE FEES.

The following appeared in the World-Herald Tuesday evening. Comment is unnecessary: JUDGE ELLER COMES BACK.

HE WRITES A VERY SCORCHING LETTER TO THE COUNTY COMMISSIONERS WANTS TO KNOW HOW ABOUT TURNING IN CAKE AND SUPPERS RECEIVED FOR PERFORMING MARRIAGE CEREMONIES.

Judge Eller has written the following letter to the county board: To the Honorable Board of County Commissioners.—On the 11th inst. I received a certified copy of your resolutions relating to transcripts and marriage ceremony fees, I hasten to answer.

I have read the opinion of Mr. Mahoney referred to in your resolutions, and in so far as the same relates to transcripts, I believe the opinion is in the law, and desire to say that it has never been my intention to act in any different manner, and if there has been anything different it will be corrected as soon as we can ascertain the fact.

As to the law of marriage ceremony, relating to the question, as the liability of the county judge to account for any money that may be paid to him for performing the ceremony, the statutes of 1866, chapter 34, entitled "Marriage," section 8 is as follows:

Section 8.—Every judge and justice of the peace, and every licensed and ordained preacher of the gospel may perform the ceremony of marriage in this territory. Note that there is nothing in this chapter pertaining to any fee for the ceremony, and there is nothing in any statute or act of the legislature relating to a fee for marriage ceremony which may be performed by a judge, or preacher of the gospel, or minister.

In 1869 the legislature amended section 8 to read: "And every preacher of the gospel authorized by the usages of the church to which he belongs to solemnize marriages may perform the marriage ceremony in this state," and continues further as to duties of certifying the marriage, etc.

There has been no change in the law since that date. The constitution provides that no judge of the supreme or district courts shall receive any other compensation, perquisite or benefit for, or on account of his office, in any form whatsoever, except salary.

judge must perform marriage ceremony, and must pay the money which he receives into the treasury. The act requiring a quarterly report of fees was in force January 1, 1878, and since that time William A. Bartholomew has served three years, A. M. Gindwink three years, J. H. McCulloch four years and G. W. Shields four years, and not one of those honorable gentlemen ever reported a fee for a marriage ceremony, so far as the records of this court disclose.

Now, if it is the honest desire of the board simply to perform a duty, and not harass and besmirch the present incumbent of the office of county judge, allow me to suggest that you make a test case on the first judge that failed to comply with the law, and thus avoid the appearance of a personal character. A suit of this character against one not in office casts no reflection upon him under such circumstances, but you know, it being conceded that there is no dishonesty in the matter, that a suit, however unfounded or unjust against one in office, is misunderstood by the public; about all the public knows is that a suit is pending, and therefore there must be something wrong.

An illustration is at hand on this point, the fact that you were considering the opinion of the county attorney caused your chairman to give an interview which was misconstrued or misunderstood, and the result was a leading editorial in the Bee, asserting in the most positive and unequivocal terms that I was guilty of malconduct in office refusing to account for and pay over marriage license fees, when in fact there was not the least foundation for such a statement.

Of course you may say that I would be accorded the privilege of correcting the statement, but that does not repair the harm, and besides I am unalterably opposed to going into print. I have no concern as to the outcome of litigation upon this subject, but I submit to your honorable body, that it is unfair and unjust in the extreme for you to select one in office to practice upon. A public officer in one department should not, in such a case as this, when the honorable object is to test the law, precipitate aggravating and annoying litigation upon another department, which can fairly be tested in another way, without injury to the public service.

Now following this suggestion, if a test case should be made upon the first judge who has failed to comply with the law, as you construe it, neither he nor the public service would be injured and if it should come your way all of us who followed would simply pay in accordance to the decision of the court.

I had the office so short a time that the mere matter of dollars that would come out of my pocket would not materially effect the county or myself, consequently I do not understand why you make a target of me.

I make it a rule to answer nothing in a newspaper while I am in office. The editorial, after stating the facts positively, wound up by saying that I should be impeached. Now, if the facts stated were true, the conclusion would be correct and the fact that they were false in every particular, illustrates the point that a mole hill grows to be a mountain when one is in office.

The law relating to the fees of justice of the peace and probate or county judge, has not been changed in language since 1866. Now it is claimed by some that because the justice is limited to \$3 for a ceremony, and by reason of the law relating to county judges, the county judge must account for money received for a ceremony at that rate.

This position might be taken upon reading only a part of the statutes, but even County Attorney Mahoney would not base his opinion, or any part of it, upon such ground. The law referred to is as follows: "The county judge for any service performed by him in any matter within the jurisdiction of the justice of the peace, shall be allowed the same fees, etc."

And in civil actions triable in the county court, of which the justice has not jurisdiction, "the county judge shall be entitled to reclaim the following fees, etc."

Now in construing this law we must take into consideration the subject matter of this section of the statute, which is fees to be charged in matters which by the constitution and the law may be brought before the court for consideration and duties required by law to be performed.

With this idea in view that when any other statute, exclusive of the statutes relating to justices of the peace, gives the county judge authority or jurisdiction in a matter the county judge acts under the statute which is made for the county court, but if it is a matter peculiarly and originally in the jurisdiction of the justice and not conferred upon the county judge, except by the provisions of the justice act, in such case only we are governed by the law relating to justice of the peace.

The jurisdiction or powers of the county court is established by the constitution and the statute. The statutes provides that the county judge shall have the ordinary jurisdiction of a justice of the peace; here again the subject matter of the act is applicable only to the matters of litigation.

For illustration, the statute provides that justice of the peace shall be before viewers, and gives them fees for such services. You would not claim that county judge has such authority? They have authority to convict persons for driving diseased cattle through the county, and to order a constable to impound such cattle, etc.

But the county judge would have no such authority. The justice has jurisdiction to hear complaints and cause a flock of sheep to be inspected for the scab or other contagious disease, but the county judge has no such jurisdiction. It takes two justices to call a special meeting of citizens under township organization.

A county judge would be sent to an asylum would he insist that he had such jurisdiction. A justice can try persons for violating an ordinance in a village. A county judge could not do so. A justice can act as police judge in cities, but the county judge cannot; he oversees the poor in their respective precincts, he enters judgment on arbitrators report under the herd law, he is authorized to perform marriage ceremony, but these are not matters of the ordinary jurisdiction, and I believe there is no lawyer who will give the matter thorough investigation who would contend that the county judge has authority in any of these matters by virtue of the law which confers the authority on a justice of the peace.

However, the law might confer all of these matters upon the county judge, but they cannot be included in the term ordinary jurisdiction of a justice. In other words, the law conferring authority to a justice of the peace to perform a marriage ceremony is in the same line as those itemized above—it is in no sense the ordinary jurisdiction.

The police judge, the supreme judge or the county judge, or a minister, performs the marriage ceremony by virtue of the same section of the statute and no other, and there is no fee provided by law for such service, and if any sum is paid, it is gratuitous. There could be nothing recovered in an action at law by any of us, should a party neglect to pay. However, for the reason that the law provides that a justice may collect \$3, he could recover a judgment therefor.

Having disposed of the justice of the peace theory, which, however, I think is not seriously contended for, I will consider the opinion of County Attorney Mahoney. He says: "In the case of Nebraska ex rel. vs. Kelly the court held in effect that whenever a public officer receives fees for performing any function which he is authorized to perform by virtue of his office such fees are to be treated as fees of the office and accounted for as such."

The case cited cannot be tortured to support the proposition stated by Mr. Mahoney, but to the contrary the court says: "The law having made it the duty of the officer to perform the acts as county clerk, he is not relieved of entering the amount of money collected for such services on his fee book on the ground that the acts were performed as notary public."

Again the court says: "If he was required by law to perform such services as county clerk that it was unquestionably his duty to report the compensation received therefor." In each and every case decided by the supreme court, the foundation of the decision is based entirely upon the admitted fact that the service was a part of the duty of the officer; in other words, that the officer could have been compelled to perform the act.

Now we come back to the first question—can the county judge be compelled, or is it his official duty to perform a marriage ceremony? Bear in mind that the same section of the law which authorizes the police judge, the district judge, the minister, the priest and the rabbi to perform the ceremony is the same which authorizes the county judge, and none other. If it is the duty of the one it is the duty of the other. If the words "may perform" in this statute means "must perform," then in such a case a mandamus will lie, to compel a district judge or a supreme judge to perform the ceremony without fee or present, mandamus will compel the minister to perform the ceremony for a couple against his conscience under any circumstance. The mandamus will compel the priest to perform the ceremony and join a devoted Catholic to a shouting Methodist without dispensation from the bishop. The rabbi could not exercise his conscience.

Beyond all this there are some difficulties in the way of arriving at just what we should do. If you are entitled to anything it must be just that which I received, for I do not suppose that you would consider for a moment that I shall give you anything different from what I received. Now suppose I receive \$3 for the ceremony and make a present to the bride which cost me \$10, how are we to settle that account? Suppose my carriage to the wedding cost me \$6 and I receive nothing but a splendid supper and a good social time, which I regarded as very satisfactory. Those matters will present some difficult problems, and when we take into consideration all of the equities the county might come in debt to me on a final accounting.

Again, I have no fee for a ceremony. I never asked a man or woman for any pay for such service. When they ask me I say, "I am like a minister, I leave that to you." Now it frequently happens the considerations which I receive is a jolly time with the party, a good square meal of cake, pie, meats and a score of good things. I could not decently enter that upon the fee book, and I do not see how I could turn it into the treasury or what benefit it would be to the county if I did. Yours very obediently, J. W. ELLER.

WILL CELEBRATE.

It has been definitely settled that there will be a celebration on Washington's birthday in this city. Exposition hall has been engaged for the evening entertainment. Speakers of national reputation will probably be secured to deliver the addresses.

John M. Thurston, Senator Allen, J. G. Tate, W. J. Bryan together with other eminent speakers have been asked to participate, but have not as yet signified their intention. The Omaha Quartette will render four selections, and you who have heard them sing know that that part of the program will be well worth going to hear.

A large number of children from the public schools will take part. A parade will take place at one o'clock, which will be led by the Seventh Ward Military band. An invitation has been sent to all patriotic societies to participate. From present indications the celebration will be a success. Every loyal American in the city should turn out. There should be 10,000 men in line. Are there one-third that number who are not ashamed to turn out and honor the father of our country? Everybody is invited.

Since writing the above the following program has been handed in: Programme: Hon. A. S. CHERCHILL, CHAIRMAN.

1—Music..... Omaha Quartette 2—Prayer..... Rev. Frank Foster 3—Music..... Omaha Quartette 4—Washington..... Hon. John L. Webster 5—Government by the People..... Senator Wm. V. Allen 6—America Among the Nations..... Judge C. R. Scott 7—Music "Violin Solo"..... Hans Albert 8—The young American..... Charles E. Winter 9—Lincoln..... Hon. John M. Thurston 10—The Flag..... Chancellor C. F. Creighton 11—Music..... Omaha Quartette 12—Our Public Schools..... Rev. J. G. Tate 13—American Citizenship..... Rev. J. G. Tate 14—Music..... Omaha Quartette

THIS MEANS YOU.

The Jr. O. U. A. M. will give a social and literary entertainment in G. A. R. hall in Council Bluffs, the evening of Feb. 22, in commemoration of the birth of Washington. A good programme has been arranged and an enjoyable time is anticipated. All American citizens are earnestly request to attend and participate.

THE BEE'S CONSISTENCY.

No. 1.—A few weeks ago the Bee opened its columns to a controversy between defenders of the A. P. A. and its papist enemies. When the latter was worsted the Bee immediately declared its columns closed against further discussion.

Last week the same sheet had a column and a half of lies and abuse against the A. P. A., dished up by rank Romanists and their pliable tools. This is in line with the Bee's past record for consistency. No. 3.—The Bee howled itself hoarse when on one occasion detectives went around the city as spies to get evidence against saloon keepers for selling liquor on Sunday.

The consistent Bee a few days ago sent spies around the city with instructions to induce certain parties to sell them a drink under any sort of pretence. No. 3.—The Bee has always pretended to be the friend of the laboring man. When Irish Roman Catholics were janitors in our schools no money was too large for them, but now it happens that a few A. P. A's are engaged as janitors, and now the Bee is turning heaven and earth to reduce the wages of those sons of toil to starvation prices, while it smiles at the outrageously high salary received by the city engineer. B. F. Thomas, solicitor for Bates, Smith & Co., and member of the board of education, was the happiest man in Omaha last Monday. The reason is easily ascertained. Mrs. Thomas had presented him with a pretty, plump, nine-pound girl. Both mother and daughter are getting along nicely.

SOLID GOLD.

P. O. S. of A., \$1.25. Jr. O. U. A. M., 75 cents. Loyal Orange, \$1.50. BELL STORE JEWELRY DEP'T. Dodge and 15th.

Legal Notice.

In the district court of Douglas county, Nebraska. David Addison Smith, plaintiff, vs. Ada M. Smith, defendant.