

OFFICIAL PAPER CASE UP

World-Herald's Petition to Mandamus City Against The Bee in Court.

JUDGE DICKINSON SITS AT HEARING

Action is Ongoing of Council's Decision, After Careful Investigation, that Bee Has Larger Circulation.

The controversy between The Bee and the World-Herald to secure the declaration and appointment of an official paper has been carried before Judge Dickinson on the petition of the World-Herald for a writ of mandamus to stop the city council from carrying out its avowed purpose of designating The Bee as the official paper of the city, following a hearing in which both sides to this controversy have previously set forth their claims, wherein it was shown that the World-Herald's claim to a circulation of 5,000 and the further claim that it was the lowest bidder were disproven, and the city council thereafter declared The Bee the official paper of the city. The writ for the mandamus is the outcome of this action on the part of the council and is asked by the World-Herald.

In the beginning of the case yesterday City Circuit Judge Hemming of the World-Herald testified that the World-Herald now has twenty-eight routes for the delivery of the Evening World-Herald, each of which was in charge of a carrier whose duty it was to deliver the papers daily and to collect the subscription money. It was shown that the actual list of subscribers was vested in the carriers themselves, rather than being a matter of record on the books of the World-Herald. Mr. Hemming could not testify as to the number of subscribers during the last week in June, which is the time designated by law for the filing of bona fide circulations on the part of official papers.

W. J. Connell, attorney for The Bee, then attempted to ascertain the extent and character of the actual knowledge of Mr. Hemming as to the methods and manner of determining the circulation of the World-Herald and as to whether he was competent to testify upon that point. Mr. Connell argued that the World-Herald should not attempt, nor did it have the right under the law, to introduce new evidence, nor make any different showing from that which was attempted before the city council at the time when the question now in controversy was settled in September. Mr. Connell objected on the ground that Mr. Hemming's testimony was immaterial, irrelevant and incompetent; also especially for the reason that the petition filed in the case does not state facts sufficient to constitute a cause of action or sufficient to entitle the plaintiff to an injunction, or sufficient to entitle the plaintiff to a writ of mandamus, or to any writ of relief whatsoever; also for the reason that a mandamus will not require the mayor and council to do an act in the performance of which discretion or judgment is required to be exercised; also on the ground that in the pleadings and under the undisputed issues in this case, as shown by the petition of plaintiff, the answer of the mayor and council, the petition of intervention of The Bee Publishing company, the supplemental petition of intervention of The Bee Publishing company, and the reply of plaintiff, the judgment of this court must be for the mayor and council and said Bee Publishing company and against said plaintiff. Also for the additional reason that said testimony does not relate to the evidence which was before the members of the city council in general committee. Asked for the further reason that it is not stated in the petition, nor is it now claimed by counsel for the plaintiff, that the members of the city council, in determining that the Evening World-Herald did not have at least 5,000 actual and bona fide subscribers, and was not the correct bidder, acted fraudulently, collusively, or did not act in good faith.

See Proves Its Claim.

To further establish the undoubted right of The Bee to its claim of being the lowest bidder, and that it had an actual bona fide city circulation of more than 5,000 subscribers, Mr. Connell pointed to the hearing which had been made before the city council, as required by law, and the resolution which was afterwards adopted by the city council, as the result of its investigation, wherein it was recited that The Bee's claim was found to have been clearly proven and substantiated in every particular and that the claims of the World-Herald had been disproven. The resolution, adopted by the city council on September 23, as a result of its investigation in this matter, is here shown:

Whereas, by the express provision of the charter of cities of the metropolitan class it is made the duty of the city clerk, during the month of June of each year, to advertise for proposals for publishing in some daily newspaper all city notices, ordinances, etc., which bids are required to be presented to the council at its first meeting in July, and

Whereas, the city clerk, as required by law, did advertise for the month of June, 1903, and at the first meeting of the council in July did submit the bids of The Bee Publishing company and the World-Herald Publishing company to said city council at its first meeting in July, 1903, at which time and place a written contract was made and filed by The Bee Publishing company that the World-Herald Publishing company did not have 5,000 actual and bona fide subscribers in the city of Omaha, and

Whereas, by the express provisions of said charter it is required that the daily newspaper in which such publications are to be made must have been published for at least one year immediately preceding the time of making the bid and must have at least 5,000 actual and bona fide subscribers in such city, and

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is the measure of the man--also the measure of the man's clothes bearing this famous mark



"Character" is the watchword of BENJAMIN workers. From the first shrinking to the final pressing their one aim is to give the garments individuality--a character of their own. BENJAMIN Winter Suits are designed, shrunk, cut, and tailored by 3,000 salaried specialists in the most spacious and sanitary tailor-shops in the world.

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PILES

an serious, cause much pain and discomfort, and sometimes so that it is difficult to sit down. Symptoms: There may be itching, burning, smarting, itching, tumor form, enlargement, and prolapse, causing very serious and painful. To cure them quickly and painlessly use INJECTION MALDYOR. Instant relief. Cures in several days. Sent with syringe, for \$1.00. Sherman & McConnell, Omaha, Neb. Sole and Wholesale Agents.

WOMEN

WOMEN'S HEALTH. Dr. Searles & Searles, Specialists. Cure all diseases of women. Blood purifier. Painless treatment. Write for particulars. Sherman & McConnell, Omaha, Neb.

WHICH WILL YOU HAVE?

A GENUINE DIAMOND at \$125.00

OR

A BARRIOS DIAMOND AT \$3.00



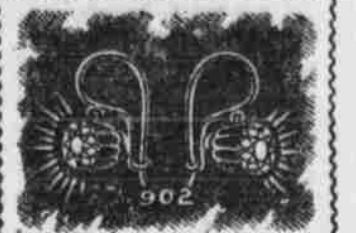
Genuine Diamond, Price, \$125.00.



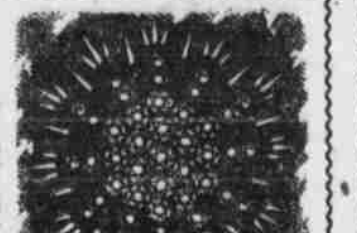
BARRIOS DIAMOND, PRICE, \$3.00.

There is as little difference between the actual rings as there is in the illustration.

Barrios Diamonds have caught the public fancy. Every year they are growing in popularity. To meet the growing demand, the Barrios Diamond Co. now has stores in Chicago (five on State st.), St. Louis, Seattle, Denver, Detroit, Cleveland, Pittsburgh, New York, Buenos Ayres, Paris, Berlin, London and scores of smaller cities in the United States. Come and see these magnificent imitations that have caused the wonder of the entire world, FOOLED PAWNBROKERS, DECEIVED EXPERTS & PUZZLED GOVERNMENT INSPECTORS



Solitaire Drop Earrings. Duplicates of the famous jewelry worn by Mrs. Barrios, pronounced genuine by experts. These earrings are of extra heavy gold, warranted to wear for 15 years. Set with perfectly white and brilliant stones that absolutely defy detection. They seem to be worth at least \$150.00. Our price \$2.00



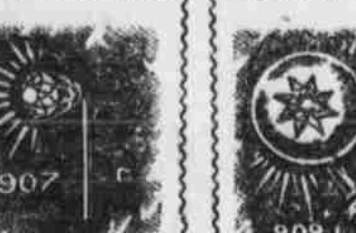
Star Tiffany Sunburst. An exquisitely beautiful and brilliant collection of blue-white stones. A brooch which could not be duplicated in genuine diamonds for less than \$200.00. Our price, and you can't tell corporate it from the genuine. \$2.50



Moorish Brooch. A quaint and beautiful design originally worn as a pendant. An exact copy of a Moorish design. The piece is made of gold filled set with pure white, perfectly brilliant stones. A special bargain; our price \$2.00



Triple Serpent Ring. A unique and beautiful design. Set with any combination of stones, Ruby, Emerald, Turquoise or pure white, perfectly brilliant Barrios diamonds. A piece that should be worn. Our price \$3.00



Solitaire Scarf Pin. Perfectly white and brilliant 2 or 3 karat stones, hand set in heavy gold filled mounting. Our price (they cannot be distinguished from the genuine) \$1.50



Cuff Buttons. These links are extra heavy gold filled, exquisitely finished, plain polished gold with one brilliant white stone. They will wear forever and retain their brilliancy. Our price..... \$1.50



Cuff Buttons. A beautiful engraved design set with 3 small but very brilliant stones. These buttons cannot be told from genuine goods worth \$125.00. They defy detection. Our price..... \$2.00



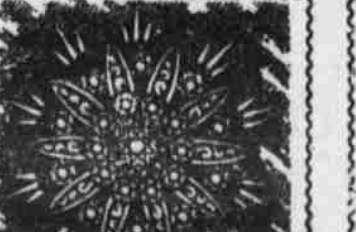
Three-Stone Tiffany. A marvel of beauty and splendor. Three white, perfectly brilliant stones, evenly matched, set high and balanced in a magnificent setting with the greatest care. A magnificent ring at a special price. Our price..... \$3.00



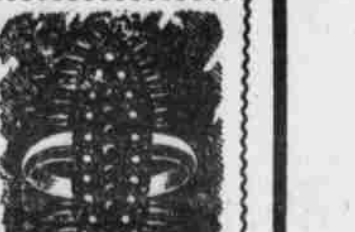
Grecian Knot. A beautiful small pin of chased gold and one large white stone of perfect cut and brilliancy in the center. The pin is made of gold filled set with the original, high water diamonds. Our price..... \$1.50



Grecian Scroll Brooch. Chased gold, set with sparkling stones. One of the most popular designs ever made. Heavy solid gold plate. Will wear a lifetime. In genuine diamonds this brooch is worth \$45.00. Special price..... \$4.50



Marguerite Brooch. Petals of chased gold, mounted with cluster of sparkling brilliant, flashing stones in the center and perfectly matched pure white stones of extraordinary beauty, between the petals. A magnificent ornament. Absolutely worth \$15.00. Bargain at..... \$3.00



Large Marquise Ring. Beautiful pure white stones, set with Ruby, Emerald or Turquoise center. The original worth \$250.00. Our price..... \$4.50



Three-Stone Gypsy Ring. Any combination of Diamonds, Rubies, Emeralds or Turquoise. A beautiful ring at a special price. Our price..... \$3.00



Cluster Ring. Pearl, Amethyst or Sapphire center. Beautiful pure white and sparkling outside stones. A beautiful ring at a special price. Our price..... \$2.50

SPECIAL SALE.

Do not miss this magnificent sale. The most attractive bargains ever offered in this city, values which could not be duplicated in genuine stones for from \$1.50 to \$4.50 each. These goods are the equal in appearance of the most expensive and exclusive designs and positively defy detection. The goods speak for themselves. See them and be convinced. They justify the closest inspection and stand the most severe criticism.



Tiffany Engagement Ring. An exact copy of the original Tiffany design. The ring is hand set with perfect care. It is absolutely cannot tell the ring from one with genuine diamonds. Our price..... \$2.00



Engraved Belcher Ring. Hand made, exquisitely engraved. Large, pure white, perfectly brilliant and sparkling stones, guaranteed to retain its brilliancy for years. Cannot be distinguished from genuine diamonds. Our price..... \$2.50

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FOR BIGGER AND BETTER CITY

Prominent Business Men Say Present is Time for General Activity.

GREAT OPPORTUNITIES NOW AT HAND

Commercial Club Members Assert Through Medium of that Body Local Interests Should Be Promoted.

That Omaha is about to rise up in its might and shake itself there can be no doubt, and in the process a good number of decayed ideas as to the size, advantages and present condition of the city will be tossed to the winds. Members of the Commercial club are prodigal in the expenditure of \$30-chunks of thought as to how the fair hand of "Commercial advancement" may be gladly warmed. Various means are being discussed through which have to do to increase its effectiveness in every way. The large meetings are in favor.

"The present is a turning point such as the city has hardly ever had," said O. D. Kiplinger of the executive committee. "Everything is leading here and all we have to do is to grasp the opportunity. At this supreme time we ought to have the help of every one, and without the help of every member we can do nothing. During this period we should have semi-monthly meetings of the club as a whole--the young members, as well as those who have been the leaders. Every one has ideas and we can take the good, and where members are wrong they will learn. Among the members the big bubbles will rise to the surface, as you see them in boiling molasses, pushing aside the little ones. So any one who has the ideas will come to the front."

Want Enthusiasm First. "Members of the Commercial club sometimes say, 'What's the matter with the club? I've been a member for years, but there never seems anything for me to do.' We should have twenty good meetings of the whole club a year in place of one. We want enthusiasm first. If a man has no enthusiasm for his business he does not get on. It is the same in the club. If we have enthusiasm we can get money. We don't want enterprises to come here which need bonuses. Those which have not been a success elsewhere will not win out here. We want men with money to locate in Omaha."

"It is a mistake to say as some are saying that the club has done nothing. Everything that has been done in Omaha for years has been fathered by the club and it has been a home for all manner of enterprises. The trouble is to get the strength of all the members. At the meeting Tuesday there were only about sixty-three, and a lot around would show that beyond a few new faces they were the same old wheelhorses who have started everything which has been done in Omaha."

"The Commercial club has been the father of all the important propositions which have come up in this city since its organization," said A. Hospe. "Just suppose the club should go out of existence for a while; people would soon begin to remember what the club had done. I am in favor, however, of a meeting of the entire club once a month, business and social, with perhaps a little dinner. It would be a good thing if the members would attend the weekly meetings of the executive committee and bring up all matters which they think will be of use to the club or city. They could send us suggestions. The meetings are open, but members have not taken advantage of them in this way. I think that they would, however, if they had any grievances."

Hospe Claims Much for Club. "We have only 450 members and the fee is only \$2, while in other cities it is \$40 or \$50. For the money we have I will say that the club has done more than any club in the west. I have been a member of the club since 1882 and of the executive committee for seven or eight years, and during that time all the successful things for the good of the city started in the club and were organized there, among these the society circus, the Transmississippi, the Ak-Bar-Band and the street fair, the Auditorium and the Business Men's association. The club has undertaken at great expense trade excursions; it pays railway fare rebates to out-of-town customers who bring thousands of dollars to Omaha; it has taken up the irrigation movement; it has

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Next Butchers, Attention.

Master Butchers, take notice. On Sunday afternoon at 2 o'clock the funeral of our deceased brother, Justus Petersen, will take place from the southeast corner of 24th and Charles streets. A full attendance of members is desired.

Books Void of True Record.

In the questions submitted to City Circuit Judge Hemming of the World-Herald by Mr. Connell some interesting facts were developed, one of which was that no true record of the bona fide circulation of the paper could be shown or indicated by the books of the concern. Mr. Hemming testified that the books would show the number of papers delivered to the carriers, but that they would not show the amount of cash which had been paid to the carriers by the actual bona fide subscribers. It also was shown that there was no record made or kept of the receipts from the subscribers, and that the books only show the payments in cash made by the carriers for papers which had been furnished them for delivery to subscribers.

It was shown that only when required to do so did the carriers submit a list of the subscribers for whom and to whom they were furnishing papers. Once each month it was stated that the carriers ordinarily turned in such a list, but that such lists could not now be produced for the reason that they had been destroyed. It also was shown that some of these names had been placed on file, but this was not always done and for that reason it would be impossible to ascertain the actual number of bona fide subscribers to the Evening World-Herald could not be determined from those on the morning paper, since the receipts for the two papers were always combined, since only a few of the routes are independent of the morning paper.

Under the continued questioning of Mr. Connell the admission was made by Mr. Hemming that he actually and personally knew as to the exact number of subscribers to the World-Herald during 1903 and up to the present is limited to the returns submitted in writing or verbally by the carriers.

World-Herald Ads Void. In his arguments Mr. Connell said that but two questions are at issue in this controversy, namely, whether the World-Herald had 5,000 actual bona fide subscribers, and whether it was the lowest bidder. An important point was scored by Mr. Connell when he argued that since the mayor and council, after continued deliberation, had determined that the World-Herald did not have 5,000 actual bona fide subscribers, that if important publications or advertisements which are required by law should be placed in that paper they would be void. Therein was that Mr. Connell followed this up with the law point that the World-Herald had no right in this hearing before a court of the law to introduce new evidence nor to make a different showing from what it had made before the city council.

Mr. Connell stated that the only showing which could be attempted at this time would be one which endeavored to show

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entertained distinguished visitors to the city; its members held the business men's meeting on the tax assessment, and the club has furnished a meeting place for the Real Estate exchange and various social and fraternal societies.

"If there is anything on the table of importance the meeting is called at the Commercial club. Not a day goes by but that something for the public good is not going on at the club. Every business man in the city should be a member of the club, then we would have just so much more strength."

Gets \$100,000 a Year. Because he has a keen, clear brain in a vigorous body. Electric Bitters give both, and satisfy of no man. Try them. For sale by Kuhn & Co.