

THE OMAHA DAILY BEE

FOUNDED BY EDWARD ROSEWATER. VICTOR ROSEWATER, EDITOR.

Entered at Omaha postoffice as second-class matter.

TERMS OF SUBSCRIPTION. Sunday Bee, one year, \$1.00. Daily Bee, one year, \$3.00. Daily Bee (without Sunday), one year, \$2.00.

DELIVERED BY CARRIER. Evening Bee (without Sunday), per week, 10c. Daily Bee (without Sunday), per week, 10c. Daily Bee (including Sunday), per week, 15c.

COMMUNICATIONS RELATING TO NEWS AND EDITORIAL MATTER SHOULD BE ADDRESSED OMAHA, BEE, EDITORIAL DEPARTMENT.

REMITTANCES. Remit by draft, express or postal order payable to The Bee Publishing Company.

STATEMENT OF CIRCULATION. State of Nebraska, Douglas County, ss. Dwight Williams, circulation manager of The Bee Publishing Company, being duly sworn, says that the actual number of full and complete copies of The Daily Morning Evening and Sunday Bee printed during the month of December, 1910, was as follows:

Net Total 1,244,587. Daily Average 48,989. DWIGHT WILLIAMS, Circulation Manager.

Subscribers leaving the city temporarily should have The Bee mailed to them. Address will be changed as often as requested.

Puzzle—Try to find an Ohio man who will admit he is from Adams county.

What constitutes a good grand opera, one that the hearer cannot understand a word of?

Prof. See of California says apples are growing on Venus. That would be a sight to see, sure.

If Governor Foss of Massachusetts doesn't stop talking soon his year will be up with half unsaid.

It is to be hoped the new senator from Ohio, Mr. Pomeroy, will not be called Pomeroy by mistake.

"The Country Boy," a play, is said to be doing well in Chicago. But then, that is not a stage joke.

Who knows but when the Hornet steamed out from New Orleans she went to bombard San Francisco?

Chancellor Day insists that "we need more statesmen and fewer carpenters." What, tired of hammers, already?

Ex-King Manuel is going to travel. That is what they told him to do when they made it easy for him to leave Portugal.

Two St. Louis balloonists started to New York in the dark. Most balloonists are in the dark, so they are no exceptions.

Every time J. Ham Lewis tries to become a dark-horse candidate his bright pink whiskers are the signal lights that give him away.

Ak-Sar-Ben will put a new roof on his den. Considering the roof-raising antics that have been pulled off there, the old roof has done tolerably well.

St. Louis is agitated over the exact location of the Cave of Adullam. How about that old cave of years ago out at Washington and Jefferson avenues?

Why not form an order of war-scarred veterans?—Cleveland Leader. Yes, under command of General Hobson and Commodore "Dave" Mercer.

We assume that peaceful Mr. Carnegie had nothing to do with the war on President Corey that led to the latter's loss of his job as head of the Steel trust.

Democratic Backtracking. Some of Champ Clark's chickens have come home to roost rather early in the day. He and his democratic colleagues in the house have already been caught in the act of backtracking.

Democracy's leader today is Champ Clark. His exhibition humiliates not only himself, but his party. There is not one feature of it that does him or his party colleagues the least particle of credit.

Those New York Bank Failures. It is a stout tribute to the stability of business conditions that several banks in New York could come to the brink of failure without creating more than a ripple on the vast sea of finance over the country.

The country has had an impressive object lesson of the recuperative powers of banks, the durability of its financial system and the basic soundness of business conditions.

The census figures showing the population of cities of Nebraska having over 5,000 inhabitants discloses ten cities coming within that classification, exclusive of Omaha, South Omaha and Lincoln, and all of them, with one exception, show gratifying growth in the decade since the preceding enumeration.

Nebraska's Growing Cities. The census figures showing the population of cities of Nebraska having over 5,000 inhabitants discloses ten cities coming within that classification, exclusive of Omaha, South Omaha and Lincoln, and all of them, with one exception, show gratifying growth in the decade since the preceding enumeration.

Excise board is considering further precautions to stop unlawful selling of liquor in that dry town right under the shadow of the state house? Better recall ex-Governor Shallenberger and ex-Attorney General Mullen for some more ouster proceedings.

Why is it that some of the newspaper reports of the mix-up in Nashville mentions the name of John Wesley Gaines? Can a political situation in Tennessee really swell to sublime proportions without him?—Houston Post.

A Kansas City judge holds that a wife's smoking cigarettes at home is not a sufficient ground for divorce. Perhaps not, but if the husband does not show up at the family hearth until the smoking hour is past he cannot be severely censured.

The Nebraska supreme court has decided that selling beer by the case is selling at retail. All right. Then a man who tanks up with a case or two of beer can no longer be accused of putting it down by the wholesale.

Oklahoma's new governor boasts that he is a native of Kentucky, and was inaugurated with an escort of 150 other former Kentuckians. Nebraska's governor comes from Ohio, which also supplies the people with presidents.

Still, if a person were in for being quarantined, we know of no better place of abode he might choose than the palatial home of our Young Men's Christian association.

If there is such a thing as prize winning on one's name, surely the honor belongs to Atlee Pomeroy, who will succeed Senator Dick of Ohio at Washington.

cessfully waged. The terminal tax law, which is the direct outgrowth of this fight participated in 1902 by the Board of Revenue, of which the editor of The Bee was chairman, is bringing into the city treasury an additional revenue of upward of \$100,000 a year, and to that extent relieving other taxable property which had previously been compelled to pay, as it were, excess baggage in order that the railroads might have their luggage carried free.

New Orleans Courting Gotham. New Orleans is assiduously courting favor with New York in its contest with San Francisco for the Panama exposition in 1915. It has evidently conceived the notion that the support of the metropolis will be a potent factor at Washington in the determination of the result.

This is all very true and it is also true that the bond of commercial intercourse is strong between the two sections, but with all that New York has not yet been fully convinced that New Orleans' claim to the exposition is superior to that of the Pacific coast metropolis.

But the southern metropolis has a perfect right to solicit New York's aid and it shows good sense in doing so. What is regrettable in its campaign is some of the questionable methods it employs to advance its interests.

Under the newly adopted rules of the State Board of Public Lands and Buildings superintendents, officers and employes of state institutions "who have children or other relatives not on the pay roll residing with them in the institution" will have to pay for their board.

On the appeal from the decision of the speaker in the big rules fight no response comes on roll call from Congressman Hitchcock noted as absent. When the tariff bill was up for final passage Mr. Hitchcock was touring Europe, and when the railroad regulation bill came to a showdown, he was visiting in Omaha.

What's this report that the Lincoln Excise board is considering further precautions to stop unlawful selling of liquor in that dry town right under the shadow of the state house? Better recall ex-Governor Shallenberger and ex-Attorney General Mullen for some more ouster proceedings.

Why is it that some of the newspaper reports of the mix-up in Nashville mentions the name of John Wesley Gaines? Can a political situation in Tennessee really swell to sublime proportions without him?—Houston Post.

A Kansas City judge holds that a wife's smoking cigarettes at home is not a sufficient ground for divorce. Perhaps not, but if the husband does not show up at the family hearth until the smoking hour is past he cannot be severely censured.

The Nebraska supreme court has decided that selling beer by the case is selling at retail. All right. Then a man who tanks up with a case or two of beer can no longer be accused of putting it down by the wholesale.

Oklahoma's new governor boasts that he is a native of Kentucky, and was inaugurated with an escort of 150 other former Kentuckians. Nebraska's governor comes from Ohio, which also supplies the people with presidents.

Still, if a person were in for being quarantined, we know of no better place of abode he might choose than the palatial home of our Young Men's Christian association.

If there is such a thing as prize winning on one's name, surely the honor belongs to Atlee Pomeroy, who will succeed Senator Dick of Ohio at Washington.

Initiative and Referendum at Home

From the Address of Frederick V. Holman, President Oregon Bar Association, at Its Annual Meeting, November 15, 1910.

As an instance of the working of the initiative under the amendments of the Oregon constitution, attention is called to the amendment of article viii, adopted at the election held November 8, 1909. The amendment provides, in effect, that the judicial power of the state shall be vested in one supreme court and in such other courts as may, from time to time, be created by law.

"Section 1. In actions at law, where the party in controversy shall exceed \$2, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is no evidence to support the verdict upon appeal of any case to the supreme court, either party may have attached to the bill of exceptions the following testimony, and any other matter material to the decision of the court to the jury, and shall be of opinion, after consideration of all the matters thus submitted, that the judgment appealed from should be affirmed, modified or reversed, and the court shall be of opinion that it can determine what judgment should have been entered in the case, and shall enter the same in the same manner and with like effect as decrees are now entered in equity cases on appeal to the supreme court. Provided, that nothing in this section shall be construed to authorize the supreme court to find the defendant in a criminal case guilty of an offense for which a greater penalty is provided than that which is actually convicted in the lower court."

"It will be seen that there is apparently a conflict between the provisions of the first sentence of section iii, relating to the effect of a verdict by a jury in an action at law, and the power and duty of the supreme court, in a criminal case, when it is attached to the bill of exceptions by either appellant or respondent, the whole testimony, the instructions of the court to the jury, and any other matter material to the decision of the appeal."

"Under the familiar rule of construction that where, in a statute, there are apparently conflicting provisions, they must be reconciled if it is possible to do so, section iii should be construed to mean that the verdict of a jury cannot be re-examined by any court inferior to the supreme court, and only by the latter when the whole record is before it. Thus, a circuit court cannot grant a new trial if there be a verdict of a jury, with a sentence of imprisonment, and the defendant practically there can be no appeal to the circuit court, when there has been a jury trial in an inferior court. The testimony is not transmitted in such appeals to the circuit court. But the provisions of the first sentence as to the conclusions of a verdict by a jury do not apply to a criminal case, for the last sentence of section iii is:

"Provided, that nothing in this section shall be construed to authorize the supreme court to find the defendant in a criminal case guilty of an offense for which a greater penalty is provided than that which is actually convicted in the lower court."

"The appeal provided for in section iii applies to both civil and criminal cases. The words are: 'Upon appeal of any case to the supreme court' the provisions apply. And what are the provisions upon an appeal? Either the appellant or the respondent may, within the time specified, appeal always will have attached to the bill of exceptions the whole testimony, the instructions of the court to the jury, and any other matter material to the decision of the appeal. Does this include the verdict? It is immaterial. The verdict of the jury, in the court below, is not necessary to direct what judgment should be entered. It must be guided by the whole testimony, the instructions of the court to the jury, and any other matter that either the appellant or respondent may deem 'material to the decision of the appeal.' It may enter a judgment 'after a consideration of all the matters thus submitted, that the judgment appealed from should be affirmed, modified or reversed, and the court shall be of opinion that it can determine what judgment should have been entered in the court below, or 'notwithstanding any error committed during the trial' by the court below or by the jury. It must consider whether the judgment 'was such as should have been rendered in the court below,' after a review of the whole testimony, and also after considering 'other matters in the record. There may be a simple error in the court below, in favor of the appellant, if it shall be of the opinion that it can determine what judgment should have been entered in the court below.' What, then, is the value of the verdict? By this method of appeal is not trial by jury practically abolished in Oregon? And yet trial by jury has been in existence in English-speaking countries from the time of the Anglo-Saxon rule in England until the present day!

"No provision is made in this amendment for sending the case back to the lower court for retrial. Its apparent object is to authorize the supreme court to make a final determination in every law case appealed, and in criminal cases, to direct what judgment shall be entered in the court below. But how can the supreme court make such a determination when the court below has excluded testimony which should have been admitted? Or made other rulings materially prejudicial to the rights of one of the litigants? To appeal a civil action to the supreme court, merely on error of the court below, is a verdict of a jury, for 'no fact tried by a jury shall be otherwise re-examined in any court of this state,' excepting only when a case is appealed to the supreme court, and the whole testimony, etc., is attached to the bill of exceptions. And what is the result? After the trial, as for instance, improper conduct by the jury, or that prejudice or passion influenced its verdict, and not appearing by the record of the trial, it would seem, cannot be considered by the lower court or by the supreme court. Certainly if the supreme court did take cognizance of such new matters, it could not determine what the judgment should be. But this amendment gives the supreme court the power to dispense a kind of crude, oriental justice, which may cover deficiencies in this amendment."

"While section iii gives the right by law to change the powers conferred by it on the supreme court in regard to determining what judgment shall be entered in civil and criminal cases, there is no right, by any law, to change the first sentence of section iii. A change in the latter can be made by constitutional amendment only. If the power is taken from the supreme court to set aside a verdict, and to render a judgment, then a verdict, once given cannot be re-examined by any court; however unjust or unfair, it must stand. For centuries the jury has been a check on the tyranny and corruption of judges, while, at the same time, upright judges have corrected the verdicts of ignorant, prejudiced and venal juries. To do away with the balance of power is to set aside the best safeguards for justice which the wit of man, guided by the experience of centuries, has been able to devise."

"At first sight, the first sentence of this section iii would appear to be a check on the tyranny and corruption of judges, while, at the same time, upright judges have corrected the verdicts of ignorant, prejudiced and venal juries. To do away with the balance of power is to set aside the best safeguards for justice which the wit of man, guided by the experience of centuries, has been able to devise."

"Consider the vote by which this amendment was adopted. Initiative amendments do not require a majority of all the voters, merely a majority of the votes cast for or against the amendment. The total number of votes cast for governor, which was less than the number of registered voters, at the election November 8, 1909, when this amendment was adopted, was 117,850. The vote in favor of the adoption of this amendment was 44,645, and against its adoption 28,307. The affirmative votes were 14,900 less than the majority, a proportion of votes cast for the amendment as compared with total votes for governor of less than 38 per cent. There were 23,728 votes for governor who did not vote on the amendment at all. The total number of voters who voted against this amendment, and those who did not vote on it, is 75,045, as against 44,645 who voted for it. And this a constitution is amended in Oregon and the vital principles of American institutions and the precedents of law, and the safeguards of liberty and of a republican form of government, may be set aside."

"It may be that my conclusions as to the effect of this amendment are wrong, but I believe I am right. In any event, a radical change has been made in Oregon's fundamental law. It is true, the Oregon supreme court may, by its decisions, amend this initiative amendment of article viii, and say that its effect must be as the supreme court decides. It was held in Straw against Harris, 54 Oen. 454 (108 Pacific Reporter, 77), that 'the language used in the amendment considered would appear to give' certain powers, and that 'whereas the initiative amendment of this amendment, it cannot be held that the

Oregon constitution can be so amended. But this is a limitation on the power of voters of Oregon to amend the constitution, and is a limitation that is not in the constitution itself. What, then, of this sacred right of the initiative? And what of the doctrine, by which it is upheld—that the people are never wrong? And thus 38 per cent of them are right in amending the constitution for the other 62 per cent. Let the minority rule!"

"As there are no limitations on the powers of the voters to amend the Oregon constitution, it would not be impossible to have an amendment providing for referendum votes on decisions of the supreme court. A petition with 8,000 signatures would require such an amendment to be submitted to a vote at the next election. 'I have written to show in how crude, unsatisfactory and ignorant a manner radical changes may be made by initiative amendments and to a carefully considered and established constitution, such as Oregon has had for more than fifty years. It is to be hoped that the time is not far distant when the legal voters of Oregon will invoke the initiative to abolish it.'"

People Talked About. Bronson Murray, a distinguished civil engineer in his day, who survived the first and second lines of the Erie railroad in 1852-56 from New York to points far to the westward, died at his home in New York. He was 83 years old.

The fattest barber in the United States died of apoplexy in Pittsburg recently. He was Samuel Harvey of Carnegie. He weighed 600 pounds and was proud of it. He also took pride in being a friend of Honus Wagner, the ball player, who was his neighbor.

An Indiana volunteer soldier has been granted a pension of \$12 a month in recognition of the fact that he allowed himself to be bitten by mosquitoes to test the theory of malaria and yellow fever infection during the earlier occupation of Cuba by the Americans.

It is said that forty-five of the mutinous Brazilian sailors have met with "sudden death" since, on the night of November 22, the crews of five battleships revolted, killed four of their officers and made one of their number, Jean Candido, the commander of the squadron. It is now announced that Candido has died on gallows, twenty-six from minotrois and eighteen others have been suffocated.

Illia are soon to be introduced into the Missouri legislature which will allow the erection of a fitting state memorial to Mark Twain at Hannibal, his boyhood home. One measure calls for a state appropriation of \$10,000 for a monument. The citizens of Hannibal have promised the most conspicuous place in their city for a site. This will doubtless be "Lover's leap," a high bluff overlooking the Mississippi and close to Tom Sawyer's cave.

Whittled to a Point. Notice! It must be a dreadful sensation to run over a man! "Chaufeur—Not nearly so dreadful as it runs over a cow—and it doesn't injure the machine so much.—Judge.

"You advise that man's constituents to stand by him?" "Yes," replied Farmer Courtessell, "I advise 'em to stand by close enough to watch everything he does."—Washington Star.

Visitor—How was the show at the opera house last night? "Rural Citizen—Fine. That fellow's imitation of actions we'd never seen was the best I ever saw."

"I shall wed money," said A. "And I shall marry blood," said B. "You will find it the same in your daily lives," said C. "How?" dictated A. plus B. "Money talks you know," grinned C, "and blood will tell."—Toledo Blade.

"Have any serious trouble with your new automobile?" "Not a bit. So far I haven't hit a single man without being able to get away before he got my number."—Cleveland Leader.

"Don't know whether I ought to recognize him here in the city or not. Our acquaintance at the seashore was very slight."

"Yes, but that was all."—Louisville Courier-Journal.

TO AN OLD SHOE. Youth's Companion. We've walked the ways of life, old shoe. The rough and smooth together. I've kept you under foot, 'tis true. But you've been honest leather.

You've not refused to take the dust. Your shining surface soiling. You've been a friend faded, I could trust. In pleasure and in tolling.

You've borne the brunt of many a blow. By foes for me intended. You've never kicked a fallen foe. 'Tis true, you've not kicked a fallen foe. 'Tis true, you've not kicked a fallen foe. 'Tis true, you've not kicked a fallen foe.

Some Reflections on the Building Record of the Year. The United States built in the year just closed 4,300 miles of railroad, leading all the countries of the world in new mileage, as it has every other year for the last half century. It was said several years ago that the days of great railroad building in this country were over, and that henceforth Canada, Argentina, Australia and South Africa would be the chief fields of the American republic and its power of drawing people, industry and wealth to itself were overlooked.

Canada is receiving a great immigration; its huge western plains make railroad construction cheap and easy; yet despite all the talk, it built only 623 miles last year, or about one-ninth of our own. Argentina, Australia and South Africa make showings relatively as poor. Our mileage is now nearly half that of all the world; it exceeds that of all Europe by more than 10,000 miles, and in the last ten years we have built more miles than any other country possesses.

The building of a new railroad in this country is as much a matter of the day's work that the public pays no attention to it. We have recently opened two new transcontinental lines, and in either case the event passed almost without notice. We now have seven such roads, and we should have more if it were not for the fact that the country they traverse is acquiring, like the east, a railroad gridiron of its own.

Penalized for a Good Deed. A railroad company in Ohio whose electricity leaked into a fence will have to pay over \$1,000 to a citizen who happened to be sitting on the fence when the electricity arrived. Yet the man on the fence is such a deterrent in all progress that the company was doing a good work rather than otherwise in giving a good shock.

ARE YOU GUARANTEED? There is only one quarantine-proof commodity, and that is a telephone. Last Sunday, when Small-Pox caused the closing of the Young Men's Christian association building, one hundred Bell Telephones, one in every room, served the roomers in breaking engagements and cancelling appointments.

Without Bell Telephones that great building would have been strangely isolated from the rest of the city and outside cities. With Bell service every one could talk right from his own room to any part of the city or to anywhere in the country.

NEBRASKA TELEPHONE CO., A. F. McAdams, Local Manager. Bell Telephone Service Reaches Nearly Everywhere.

Dr. W. N. Dorward "OMAHA'S RELIABLE DENTIST" Everything up-to-date. Lady attendant. Prices very reasonable. Present this ad and receive a liberal discount. 422-3-4 Paxton Blk. Both Phones.



Dr. W. N. Dorward "OMAHA'S RELIABLE DENTIST" Everything up-to-date. Lady attendant. Prices very reasonable. Present this ad and receive a liberal discount. 422-3-4 Paxton Blk. Both Phones.

Dr. W. N. Dorward "OMAHA'S RELIABLE DENTIST" Everything up-to-date. Lady attendant. Prices very reasonable. Present this ad and receive a liberal discount. 422-3-4 Paxton Blk. Both Phones.

Dr. W. N. Dorward "OMAHA'S RELIABLE DENTIST" Everything up-to-date. Lady attendant. Prices very reasonable. Present this ad and receive a liberal discount. 422-3-4 Paxton Blk. Both Phones.

Dr. W. N. Dorward "OMAHA'S RELIABLE DENTIST" Everything up-to-date. Lady attendant. Prices very reasonable. Present this ad and receive a liberal discount. 422-3-4 Paxton Blk. Both Phones.

Dr. W. N. Dorward "OMAHA'S RELIABLE DENTIST" Everything up-to-date. Lady attendant. Prices very reasonable. Present this ad and receive a liberal discount. 422-3-4 Paxton Blk. Both Phones.