tained a lien on the stock, she still has it, and any remedy she ever possessed to reach stock held by Holmes for the use of Wilson has been in no way affected or defeated by any acts of the defendants.

Reversed.

CAMPBELL, C. J., and MUSSER, J., concur.

McCALL et al. v. PEARCE, Secretary of State.

(Supreme Court of Colorado. Oct. 25, 1912.)

ELECTIONS (§ 154*) — NOMINATIONS — CONTESTS.

Under Election Act of 1910 (Sess. Laws 1910, p. 42) § 44, providing that on contests of nominations the procedure shall be by a verified petition setting forth the grounds of complaint, and a copy thereof shall be served on respondents within five days after the occurrence of the ground of complaint, a petitioner complaining that the Secretary of State refused to accept his copy of a petition cannot, where the refusal was on September 9th, maintain a proceeding upon an unverified petition not filed until October 17th.

[Ed. Note.—For other cases, see Elections, Cent. Dig. § 136; Dec. Dig. § 154.*]

En Banc. Error to District Court, City and County of Denver; Greeley W. Whitford, Judge.

Petition by Charles McCall and another against James B. Pearce, Secretary of State. There was a judgment for defendant, and petitioners bring error. Judgment affirmed.

Stuart & Murray, E. M. Sabin, and H. Riddell, all of Denver, for petitioners. Benjamin Griffith, Atty. Gen., and Philip W. Mothersill, Asst. Atty. Gen., for respondent.

WHITE, J. October 17, 1912, Charles McCall and Roy H. Blackman filed a petition in the district court of the First judicial district in the county of Jefferson, wherein James B. Pearce, Secretary of State of the state of Colorado, is named as respondent. The petition alleges substantially that petitioners are qualified electors and residents within the First judicial district; that respondent is the qualified and acting Secretary of State; that petitioners were nominated by petition, as required by law, the former for district judge and the latter for district attorney, to be voted for as such officers within and for said First judicial district, at the general election to be held in November, 1912, under the designation "Progressive party"; that such petition, so prepared, was, on the morning of September 6, 1912, presented to the Secretary of State in his office for filing, as provided by law; that subsequently thereto, on the same morning, another petition, wherein W. S. McGintie was nominated as a candidate for district judge, and A. C. Pattee for district attorney, to be voted for under the designation "Progressive party" within and for the First judicial district, was also presented at the office and to the Secretary of State for filing; that thereafter on said day the respondent declined and refused to file the petition nominating McCall and Blackman for the alleged reason that they had accepted the assembly nomination of a regular political party, but accepted and filed the petition wherein McGintie and Pattee were nominated. The petition then asks the court to cause the respondent to expunge and strike from the files of his office the McGintie-Pattee petition of nomination, and that he be prevented from certifying the names of such nominees, or those substituted therefor, to the county clerks as candidates for such offices respectively, and that he accept and file the petition nominating McCall and Blackman and certify their names to the respective county clerks to be printed on the official ballots, as provided by law, as candidates for the respective offices, to be voted for under the designation "Progressive party." An order of court in the nature of an alternative writ of mandamus was thereupon issued and served upon respondent requiring him to do and perform the things requested in the petition and writ, or that he appear before the court on the next day at a designated hour and show cause why he should not comply with such order. At the designated hour respondent appeared in court and filed a motion for change of venue, which was confessed, and the cause transferred to the district court of the Second judicial district within the city and county of Denver. Thereupon respondent filed a demurrer upon the ground that no facts were stated sufficient to constitute a cause of action against him. The demurrer was sustained, and, petitioners declining to plead further, judgment was entered accordingly.

October 24, 1912, McCall and Blackman appeared in this court and filed their "petition for review," wherein they challenge the correctness of the ruling of the district court in the premises, and ask that we summarily review and dispose of the controversy.

We think the rights of petitioners must be measured by, and determined under, the provisions of section 44 of chapter 4 of the Session Laws of 1910, pp. 15–42. The section provides, inter alia, that contests arising out of the placing in nomination by petition of a candidate, or the failure to file any such petition, or place any such candidate in nomination by any person, official, board, or convention in violation of any of the provisions of the act under which the parties hereto were nominated, shall be summarily adjudicated by the county or district court sitting within or for the political subdivision within or from which any such petition is to be filed, or any such nomination is to be made, "subject only to the summary appellate jurisdic-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key-No. Series & Rep'r Indexes

tion of the Supreme Court of the state by writ of error." Without undertaking to determine what is meant therein by the words "the summary appellate jurisdiction of the Supreme Court of the state by writ of error," and as to whether or not the case is properly here for review, we will nevertheless determine the controversy. The section requires that the procedure shall be by petition to the proper court, setting forth the grounds of complaint, and, in case of any contest, the contestee shall be made respondent; that the petition be verified and a copy thereof served on the respondent or respondents therein named within five days after the occurrence of the ground of complaint, requiring such respondent or respondents to answer thereto under oath within five days after such service. After making provision for the service of such petition, the section requires the court, upon the expiration of the time for answer, to forthwith set the same for trial upon the merits thereof and summarily adjudicate the same. The ground of complaint of petitioners was the failure and refusal of respondent to file the petition wherein and by which they were nominated. No suit was brought or petition presented to any court until the 17th day of October, and no verified copy of such petition served upon the respondent, as required by the section. Petitioners, having failed to exercise diligence, and their rights having been foreclosed by the lapse of time, cannot now be heard to complain. The judgment is therefore affirmed.

Judgment affirmed.

CAMPBELL, C. J., and MUSSER and GARRIGUES, JJ., not participating.

STEVENS et al. v. ADAMS.

(Supreme Court of Colorado. Nov. 11, 1912.)

APPEAL AND ERROR (§ 1011*)—JUDGMENTS—CONCLUSIVENESS.

A judgment of the trial court based on conflicting evidence is conclusive on appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3983–3989; Dec. Dig. § 1011.*]

Error to District Court, Teller County; James Owen, Judge.

Action by John Stevens and others against E. W. Adams. There was a judgment for defendant, and plaintiffs bring error. Affirmed.

Charles D. Gurney, of Victor, for plaintiffs in error. Boughton & Alter, of Victor, for defendant in error.

GARRIGUES, J. The object of this action was to have the court declare that a copartnership existed for working a lease on the Stratton's Independence Limited mines, and for an accounting. The answer admits the copartnership once existed, but alleges that it was mutually dissolved September 7, 1910, at which time there was a complete acquittance. It is claimed this was a plea of confession and avoidance, casting the burden of proof upon defendant. Admitting it, the record shows plaintiffs voluntarily assumed the burden of proof. We have read the entire record and briefs with care. There is no need of narrating the evidence. It was conflicting, and the court found the issues joined, in favor of defendant. We find no error in the case of sufficient importance to warrant a reversal.

Affirmed.

CAMPBELL, C. J., and MUSSER, J., concur.

McBROOM et al. v. BROWN.

(Supreme Court of Colorado. Oct. 30, 1912.)

ELECTIONS (§ 144*)—NOMINATIONS—NAME OF PARTY.

While Election Act 1910 (Laws Ex. Sess. p. 16) § 2, defines a political party as any political organization which was represented by candidates at the last regular election, and whose candidate for Governor received 10 per cent, of the total vote cast, and section 26, providing for nomination by a petition, declares that any set of petitioners may adopt any name they desire, not heretofore used by any political party as defined in the act, the name adopted by a new political party, which placed its candidates on the ballot by petition, is not subject to appropriation by other petitioners.

[Ed. Note.—For other cases, see Elections, Cent. Dig. § 126; Dec. Dig. § 144.*

For other definitions, see Words and Phrases, vol. 6, pp. 5444–5445; vol. 8, p. 7757.]

En banc. Error to District Court, Arapahoe County; Chas. McCall, Judge.

Petition by J. W. McBroom and others against Robert S. Brown. There was a judgment for respondent, and petitioners bring error. Reversed and rendered.

John H. Gabriel and Crump & Allen, all of Denver, for plaintiffs in error. Daniel Prescott, of Littleton, and E. M. Sabin, of Denver, for defendant in error.

HILL, J. Upon the morning of September 6, 1912, immediately after he opened his office, a certificate of nomination, in due form, nominating the petitioners by petition for sundry county offices, was tendered to the county clerk and recorder of Arapahoe county for filing. The name therein designated by the petitioners for their ticket was "the Progressive Party." The clerk refused to accept or file the certificate, giving as his reason that he had already filed a similar certificate for other nominees under the name of "the Progressive Party." This action is to compel the clerk to accept the certificate nominating the petitioners and to expunge the other.

No question was raised in the court be-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key-No. Series & Rep'r Indexes