receiver makes any such claim. If he has the note, it should be turned over to the plaintiff in error.

The judgment of the district court is affirmed.

Judgment affirmed.

MUSSER, C. J., and HILL, J., concur.

(58 Colo. 105)

CLEMENTS et al. v. PEOPLE ex rel. LEE. (No. 8419.)

(Supreme Court of Colorado. Nov. 2, 1914.)

1. ELECTIONS (§ 121*)—"POLITICAL PARTY"—WHAT IS—"POLITICAL ORGANIZATION."

Laws 1910, c. 4, § 2, declares that any political organization, whose Governor at the general election received 10 per cent. of the total vote cast, shall be a political party; section 10 provides that each political party shall have a separate party ticket; section 24 provides that no nominations of candidates of any political party shall be placed upon the official ballot, unless such candidates have been chosen in accordance with sections 21 and 22, providing for selection at primary election or by the central committees of the parties; while other sections require political organizations to select their candidate by petition of qualified electors. *Held*, that an association of qualified electors, who by petition place upon the ballot individual nominees for public office, constitute a "political organization," instead of a "political party."

[Ed. Note.—For other cases, see Elections, Cent. Dig. § 115; Dec. Dig. § 121.*

For other definitions, see Words and Phrases, First and Second Series, Political Party.]

2. ELECTIONS (§ 121*)—POLITICAL ORGANIZATIONS — MANNER OF BECOMING POLITICAL PARTIES.

Where three political organizations, by separate petitions, in accordance with Laws of 1910, c. 4, § 26, requiring the petitioners to make oath that they have not voted at any primary election to nominate candidates for such office, nominated the same person for Governor, the fact that such person received more than 10 per cent. of all the votes cast at that election does not entitle one of the three organizations to assert rights as a political party, without a showing that its own members cast 10 per cent. of all the votes cast at such election, even though the three different organizations stood for the same thing, but only had different names, for each under the statute acquired rights as a political organization.

[Ed. Note.—For other cases, see Elections, Cent. Dig. § 115; Dec. Dig. § 121.*]

Musser, C. J., and Scott, J., dissenting.

En banc. Error to District Court, City and County of Denver; George W. Allen, Judge.

Mandamus by the People of the State of Colorado, on the relation of A. A. Lee, as Chairman of the City and County Central Committee of the Progressive Party of the City and County of Denver, against Ellis Meredith Clements and others, constituting the Election Commission of the City and County of Denver. There was a judgment for relator, and respondents bring error. Reversed and remanded.

Francis J. Knauss and W. W. Garwood, both of Denver, for plaintiffs in error. C. M. Deardorff and P. W. Mothersill, both of Denver, for defendant in error.

WHITE, J. The people, upon the relation of A. A. Lee, as chairman of the county central committee of the Progressive party of the city and county of Denver, brought an action in the district court to compel the election commission of such territorial district to accept and use in the appointment of judges and registrars of election therein, for the two-year period beginning on the first Tuesday of July, 1914, the list of names of certain qualified electors claimed to have been certified to the proper officers by such organization under the provisions of chapter 127, S. L. 1911. Judgment was in favor of the plaintiff, and the defendant election commission brings the cause here for review upon writ of error.

The record discloses that at the primary election in 1912 the Democratic party selected as its candidate for Governor E. M. Ammons, and in the general election following he received 25,066 votes in the city and county of Denver, and in the entire state 114,044; that the Republican party at such primary selected as its candidate for Governor C. C. Parks, who received at the general election following 7,909 votes in the city and county of Denver, and 63,061 in the entire state. The Democratic and Republican parties were the only organizations participating in the primary election, and Ammons and Parks were the only candidates for the gubernatorial office nominated by such direct primary election under the provisions of chapter 4, S. L. 1910. At the general election, however, there were other candidates for such office who had been placed in nomination therefor by petition of qualified electors under the provisions of the last-named act. One body of qualified electors, so making nominations, styled itself the "Progressive party" and filed its certificate of nominations of candidates at 9:30 a. m., September 6, 1912, in which it named Edward P. Costigan for Governor. Another body of such qualified electors, styled itself the "Roosevelt party," and on the same day, at 9:05 a. m., filed its certificate of nominations, also nominating Edward P. Costigan as its candidate for Governor. And on the 11th day of September, 1912, another body of such qualified electors, under the name of the "Bull Moose Party," likewise filed a certificate of nominations wherein Mr. Costigan was also named as its candidate for Governor. The vote which Mr. Costigan received at the general election on either of these tickets is not disclosed, though it is shown that he received 23,278 votes in the city and county of Denver, and in the entire state 66,132.

By the provisions of section 3 of chapter

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

127, supra, the respective county chairmen of the two political parties in each county "having cast the highest number of votes for Governor at the last general election for state officers" are required, between the 1st day of May and the third Tuesday in June, 1914, to certify to a designated county officer the names of not less than three nor more than six qualified electors in each of the precincts; and, in conjunction with certain provisions of the charter of the city and county of Denver, the election commission is required to appoint from such list, when so certified, the registrars and judges of election. Therefore the sole questions here involved are: (1) Was the organization—the Progressive party—of which relator claims to be chairman a "political party" within the meaning of the election laws of this state at the general election in 1912? (2) At the time the registrars and judges of election in question were to be appointed, was the Progressive party, within the meaning of the election laws, a "political party" "having cast" the highest or second highest "number of votes for Governor" at the general election in 1912?

[1] 1. We are of the opinion that at the general election in that year the association of electors known as the Progressive party was not a "political party" within the meaning of the election laws, but was a "political organization" only, and as such cast its vote at that election. We can reach no other conclusion under the express language of chapter 4, S. L. 1910, which defines "political parties" and "political organizations," making a marked distinction between the two. While, ordinarily, the phrases are synonymous, the Legislature has not so used them. This is manifest throughout the entire act. Section 1 expressly declares, inter alia, "that all political parties shall make all nominations for candidates * * * by direct primary elections." Section 10 provides that "each political party entitled to participate in any direct primary election shall have a separate party ticket"; while section 24 declares substantially that, except in the case of vacancies, no nominations of candidates of any political party which is required to make nominations under the act shall be placed upon the official election ballot unless such candidates shall have been chosen in accordance with the act. Moreover, by section 21 central committees of parties existing at the time the act became a law were recognized and continued until direct primary elections should be held under the provisions of the act, at which, and thereafter at each succeeding primary election, political parties were and are required to elect a resident committeeman and committeewoman from each election precinct, who are constituted the representatives and central committee of their respective political parties; and by section 22 the candidates for state offices and representatives for Congress nominated by each political party at each direct primary election, together with the state chairman and state senators of such political party whose term of office extends beyond the second Tuesday in January of the year next ensuing, shall meet at a designated time and place and formulate the state platform of their respective parties. On the other hand, a "political organization" must select its candidates by petition of qualified electors as prescribed in the act; and there is no provision made for the selection of precinct officers, central committees, or chairmen of such organizations, nor are its candidates required to formulate and publish a platform. Moreover, section 2 expressly provides how a "political organization" may, and when it shall, become a "political party." Therein it is declared that any "political organization," which, at the general election last preceding any primary election provided for in the act, was represented on the official ballot by either regular party candidates or by individual nominees only, may upon complying with the provisions of the act, have a separate primary election ticket as a political party, *if its candidate for Governor received 10 per cent. of the total vote cast at such last* preceding general election; and any such political organization shall be a "political party" within the meaning of the term as used in the act. Thus it clearly appears that an association of qualified electors, who by petition place upon the official ballot individual nominees for public office, constitute and are a "political organization"; that as a condition precedent for such "political organization" to become and be a "political party" within the meaning of the act it shall participate in such election, and, in addition thereto, cast for its candidate for Governor at least 10 per cent. of the total vote cast at such election. When these things occur, the "political organization" becomes a "political party."

[2] 2. It may be, though we shall not now determine, that a "political party," having become such at a general election and cast thereat the highest or next highest number of votes for Governor, is, subsequent thereto and prior to the following general election, one of the two political parties having cast the highest number of votes for Governor at the last general election, and, therefore, entitled to participate, under the provisions of the act, in the selection of election registrars and judges. But, be that as it may, it is clear that the record before us fails to show that the Progressive party comes within that class. The fact that its candidates at the only state election in which it has participated were placed upon the official election ballot by petition, and not by nomination at a primary, fixed its status as an organization, which is presumed to continue until some other status is established by proper proof.

The claim is that this was accomplished by showing the total vote Mr. Costigan received. This might, prima facie, be sufficient, were it not for the fact that the record shows that he was also the candidate of two other organizations for the same office at the same election. Clearly no presumption can arise, even prima facie, under such facts, that the Progressive party cast all the votes Mr. Costigan received thereat, or any particular number thereof. To indulge that presumption would be as improper as to assume that all such votes were cast by either or both of the other "political organizations" whose candidate he was. The right claimed by the relator herein is not, under the statute, conditioned upon the number of votes which its candidate for Governor received, but upon the number of votes which his organization cast for Governor. If a person be the candidate solely of one "political party," or a single "political organization," the votes which he receives at a given election are conclusively presumed to have been cast by the particular party or organization whose candidate he is; but if he be the candidate of two or more "political parties," or "political organizations," no such presumption can exist. However, it is asserted, and evidence was offered to show, that the "Progressive party," the "Bull Moose party," and the "Roosevelt party" were but different names for one and the same "political organization," the principles and management of which were identical, and whose candidates were the same. Were it not that the statute, as hereinbefore pointed out makes a marked distinction between "political parties" and "political organizations," investing the latter with the power to become the former, such evidence might be admissible, and, perhaps, control the question involved. But, as the law is, the selection of a name and the filing thereunder of a list of nominees by the requisite number of electors creates a distinct entity, to wit, a "political organization," which can neither coalesce with some other such entity nor lose its identity therein by the mere fact that its candidates, its alleged principles, and its management are the same. This entity may, however, and does, upon certain conditions, become a different entity, to wit, a "political party." Indeed, it would seem that one clear purpose of the statute is to protect the names selected and thus preserve party integrity. Electors nominating candidates by petition are required to select a name to designate their organization, and are prohibited from using the name, or any part thereof, of any political party as defined in the act. Moreover, they are required to make oath, inter alia, that they have not voted at any primary election to nominate candidates for such offices, and no certificate of nomination is legal that does not contain the requisite number of names of voters whose names do not appear on any certificate of nomination previously filed. Section 26, c. 4, S. L. 1910. Clearly these several political organizations cannot be held to be synonymous under the laws of this state. We have already so held in Wiley v. McDowell, 55 Colo. 236, 239, 133 Pac. 758, in the following language:

"It was alleged and sought to be shown, that the Progressive, Bull Moose, and Roosevelt tickets were the same and represented the same party, and that the candidates on each of said tickets for state officers were the same persons, and a vote cast for any one was a vote for the same party as either of the others; that the words 'Progressive,' 'Bull Moose,' and 'Roosevelt' each meant, and were understood by the voters to mean, the same party; that while in Gunnison county the Progressive was the only one which filed a separate and distinct petition indorsing the Republican county ticket and candidates, thereby placing in nomination as their candidates the same as those already upon the Republican ticket, it was the same in fact as if separate petitions had been secured and filed representing each of said names, for which reason the electors, who wrote either the word 'Roosevelt' or 'Bull Moose' in the space in the ballot to be filled out in order to vote a straight ticket, intended thereby to vote for the county candidates on the Republican and Progressive tickets, and did so vote. We cannot accept this conclusion."

If, as claimed by plaintiff, there was no actual intent or purpose on the part of the two groups of qualified electors preparing, signing, and filing, respectively, the "Bull Moose" and "Roosevelt" certificates of nomination, of forming a "political organization" separate and distinct from the "Progressive party," there was, nevertheless, within the purview of the law, such intent which controlled their action in the premises. They did exactly what the statute says they may and must do to create "political organizations," which may and do, upon certain conditions, become "political parties," each separate and distinct from the other. Under each respective designation the voters thereof acquired certain political rights and benefits, separate and distinct from those acquired by the electors voting under some other political or party designation. The record shows that the vote Mr. Costigan received was cast by three political organizations, which, in law, are conclusively presumed to be separate and distinct, and each of which might have, by that very election, become a distinct political party; but it does not disclose the number of votes cast for him by either of such organizations, and therefore fails to show that the relator is the county chairman of either of the "two political parties having cast the highest number of votes for Governor at the last general election." It was incumbent upon relator to show this fact, and, having failed in that regard, no court should interfere with the judgment of the election commission in the premises.

Attorney General v. McOsker, 198 Mass. 340, 84 N. E. 472, relied upon by relator, is not in point under the law and facts here involved. Under the statute in that case no distinction appears to exist between a "politi-

cal party" and a "political organization," and therefore the general definition, that a "political party" is a voluntary association of voters desirous of promoting a common political end or carrying out a certain line of public policy, maintains. Moreover, the statute there permits the name of a "political party" to be used in conjunction with some other name in the designation of candidates nominated by petition, requiring the words "nomination paper" to be added on the official ballot following such political designation, which, the opinion holds (198 Mass. 344, 84 N. E. 473), "is for the purpose of showing which candidates, belonging to the party, are regularly nominated and which are nominated by individuals, * * * and implies that when the same person is the nominee in both forms all the votes cast for him may be treated as belonging to the same party." Under the statute in the case at bar a "political organization," as we have heretofore seen, is not synonymous with a "political party," and the meaning of the two phrases is circumscribed and limited; and electors nominating candidates by petition are expressly prohibited from using a party name or any part thereof in the designation of candidates.

Further, the Attorney General-McOsker Case grew out of a contest by two factions of the same party for the use of the party name, wherein each faction, while awaiting the determination of the question as to the right to the use of the name, filed its list of nominees, by petition, upon the last day that nominations could be so made. One faction used the regular party name, "Democratic," in conjunction with the word "Citizens,'" to designate its list of candidates, which were the same, except in one instance where the candidate had withdrawn, as its convention nominees, while the other used the words "Independent Citizen," and its candidate for Governor was the same as that of the other faction. The tribunal before which the controversy was pending finally decided that the convention certificate of nominations presented by the faction that subsequently filed its list of nominees by petition under the designation "Democratic Citizens'" was the act of the Democratic party, and the names of the candidates therein set forth should go upon the official ballot under such party designation. It was then too late to withdraw the list of nominees by petition made by this faction under the designation "Democratic Citizens.'" While it was held therein that, in determining the highest number of votes for Governor cast by the Democratic party, the number cast under the designation "Democratic Citizens'" should be included, it was, nevertheless, pointed out that those cast for the same candidate under the designation "Independent Citizen," and those cast for him under no designation, should not be included. In other words, under the statute there involved, there being no distinction between a "political organization" and a "political party," the latter may nominate candidates for public office either by convention or petition, subject only, under the last-named plan, to the use of some other word in conjunction with the party name, while nominations by petition, without the use of party names, indicate an intention to create a new party, and the votes cast thereunder for a candidate may not be included in ascertaining the number of votes cast for such person by some other party under its party designation. Under our statute, as we have seen, a "political party" cannot nominate by petition, nor can an organization so nominating use any portion of a party name, and the filing by petition of a certificate of nominations by the latter is necessarily the initiatory act in the formation of a new party.

We are of the opinion that the judgment of the trial court coercing the commission was wrong under the state of facts shown by this record. It is therefore set aside, and the cause remanded, with directions to dismiss the same.

Judgment reversed and remanded.

HILL, J., not participating. MUSSER, C. J., and SCOTT, J., dissent.

(58 Colo. 86)

PINNACLE GOLD MINING CO. v. PEOPLE. (No. 7454.)

(Supreme Court of Colorado. Oct. 5, 1914.)

1. PLEADING (§ 52*)—COMPLAINT—SEPARATE STATEMENT OF CAUSES OF ACTION.

Where a corporation for several years neglected to pay its annual corporation taxes, the tax for each year and the penalties thereon constitute separate causes of action, which must be separately stated in the complaint.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 113; Dec. Dig. § 52.*]

2. STATUTES (§ 5*) — ENACTMENT — SPECIAL SESSION.

Acts 1902, p. 43, imposing annual corporation taxes, is not invalid on the ground that it was passed at a special session, and was not within the proclamation of the Governor calling the session.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 4; Dec. Dig. § 5.*]

3. TAXATION (§ 572*)—PROCEEDINGS FOR RECOVERY OF TAXES—EXCLUSIVE REMEDY.

Acts 1902, p. 43, imposing annual taxes upon corporations, is solely a revenue measure; hence the provision of section 68 that nonpayment of the taxes should work a forfeiture of the corporation's franchise does not prevent the state from maintaining an action to recover such taxes, the only remedy prescribed in the statute being inadequate to carry out its purpose.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1132-1137; Dec. Dig. § 572.*]

4. TAXATION (§ 587*)—CORPORATION—ACTION FOR TAXES—DEFENSES.

While Acts 1902, p. 74, § 68, declares that a corporation which does not pay the annual taxes imposed by the act shall forfeit its fran-