

BROWN v. VAN CISE et al. Election Commission of City and County of Denver.
(No. 9946.)

(Supreme Court of Colorado. Nov. 8, 1920.)

Elections — 145—Judicial district greater than county.

In Acts 1910, p. 34, § 26, providing certificate of nomination shall be filed with the secretary of state when for an office to be filled by the voters of the entire state or of "any division or district greater than a county," etc., the quoted words refer to the kind of district which is commonly greater than a county, and a judicial district, though its boundaries coincide with those of a county, is greater than a county for the purpose of filing a certificate of nomination of a candidate for district attorney therefor.

En Banc.

Error to District Court, City and County of Denver; Julian H. Moore, Judge.

Suit by Philip S. Van Cise and others, as the Election Commission of the City and County of Denver, against James H. Brown. Judgment for plaintiffs, and defendant brings error. Affirmed.

Philip Hornbein and Bernard J. Ford, both of Denver, for plaintiff in error.

Henry E. May, Wm. R. Eaton, and Benjamin Griffith, all of Denver, for defendants in error.

DENISON, J. Certain parties filed with the Election Commission of Denver a certificate nominating James H. Brown as a candidate for the office of district attorney of the Second judicial district. The boundaries of that district are coincident with those of the city and county of Denver, and it is the only judicial district which does not comprise more than one county.

Van Cise, defendant in error, brought suit in the district court, and obtained an injunction forbidding further procedure under the certificate, on the grounds, inter alia, that it was not filed in the proper place, viz., the office of secretary of state, nor within the proper time, viz., 30 days before election. Brown brings error.

He relies on section 26 of the act of 1910 concerning elections:

"Said certificate * * * shall be filed with the secretary of state, when for an office or offices to be filled by the voters of the entire state or of any division or district greater than a county; with the county clerk when for an office or offices to be filled by the voters of an entire county. * * * The certificates to be filed with the secretary of state shall be filed not * * * less than thirty days * * * and the certificates * * * to be filed with the county clerk not * * * less than fifteen days before the day of election." Acts 1910, p. 34.

In Denver the election commission takes the place of the county clerk. The contention of plaintiff in error, of course, is that since the bounds of the Second judicial district are the same as those of a county, it is not a district "greater than a county." We are all agreed, however, that by the words "district greater than a county" the statute intended to refer to that kind of district which is commonly greater than a county, and that the coincidence of a district's boundaries with those of a county is of no consequence. The office in question is an office of that kind of district which is greater than a county. This interpretation better accords with the rest of the act; for example: Otherwise we must say that the Legislature neglected, in section 9, to provide for the placing of the name of a candidate for any office of the Second judicial district on the primary ballot; moreover, it seems to us most improbable that the Legislature intended that some candidates for the office of district attorney or district judge should file certificates with the secretary of state and others elsewhere.

The judgment is affirmed.

SCOTT and BURKE, JJ., not participating.

RAPE et al. v. NESS MUSIC CO. (No. 9686.)

(Supreme Court of Colorado. Oct. 4, 1920.)

1. Appeal and error — 581(5, 6)—Abstract must contain evidence and instructions.

Assignments of error on rulings on evidence and giving and refusal of instructions cannot be considered where the abstract contains neither.

2. Appeal and error — 224 — Correction of judgment without objection cures error.

An objection that a judgment should be reversed for overruling defendants' motion to vacate because plaintiff was erroneously described as a corporation is not available where the court allowed correction of the title without objection thereto by defendants.

Error to County Court, City and County of Denver; George W. Dunn, Judge.

Suit by the Ness Music Company against Lillian Rape and others. Judgment for plaintiff, and on appeal to the county court judgment was again rendered for the plaintiff, and defendants bring error. Affirmed.

Duncan McPhail, of Denver, for plaintiffs in error.

F. J. Knauss, of Denver, for defendant in error.

TELLER, J. [1, 2] Defendant in error brought suit in replevin to recover a piano