whom he has agreed, and who, on the faith and strength of that agreement, have advanced their money. What might be the situation if he was able to make proof that the agreement was not so broad or comprehensive in its scope that there was nothing in the terms and conditions of it which would equitably estop him from asserting his preferential claim, we do not determine. We simply hold that on this record as it stands, with the admission that the money was advanced by all these parties under a common agreement to enable the company to carry on its work for their common benefit, he must abide the results of that convention, and can take no part of the property of the company on any claim under the statute, but must equitably share with these other parties in the distribution of the assets of the company. We want nothing in this decision to be taken as an expression of our opinion of what the law might be if the proof were different. We simply hold that, on the case as made, the plaintiff is not entitled to maintain his bill, and, for the reasons given, the judgment will be reversed. Reversed.

ALBERS v. TURLEY.

(Court of Appeals of Colorado. Dec. 13, 1897.)

LANDLORD'S LIEN—PLEDGE.

1. A tenant placed in his rented room furniture purchased on credit, and while in arrears in rent abandoned his room, leaving the furniture, which he subsequently resold to the original vendor thereof to pay the price. *Held*, under 2 Mill's Ann. St. § 2854, providing that persons who let furnished or unfurnished rooms shall have a lien on the furniture of their tenants for rent, that the landlord had a landlord's lien on the furniture which was superior to the rights of said purchaser.

2. Where a tenant in arrears for rent agrees with the landlord that he may hold his furniture until the arrearage is paid, the landlord acquires thereby a specific lien for the amount of the arrearage, and is entitled to hold the furniture as pledgee.

Appeal from Pitkin county court.

Replevin by W. E. Turley against Theodore Albers. From a judgment in favor of plaintiff, defendant appeals. Reversed.

H. L. McNair, for appellant.

WILSON, J. This is an appeal from a judgment in favor of plaintiff in a replevin suit. The action was originally commenced before a justice of the peace, and hence there are no written pleadings. There was no conflict in the evidence. The facts upon which the controversy is based are undisputed, and the question presented for the determination of the court is purely one of law. In September, 1895, defendant, Albers, was the keeper of a rooming house in the town of Aspen. At that time he rented to one Charles Seidler a partially furnished room. Seidler purchased from plaintiff, Turley, a small lot of furniture, and had it taken to his room. Some weeks thereafter Seidler left the house when in debt for room rent in a small sum, promising to return in a short time and pay the debt. He did not return nor pay the debt, and in a few weeks thereafter agreed with plaintiff that he might retake the furniture upon cancellation of the debt due for its purchase and the payment of a small amount for the use of it. Thereupon plaintiff demanded from defendant possession of the furniture, which was refused by defendant, on the ground that he had a lien thereon, which had not been satisfied, for the amount due him by Seidler for rent. Plaintiff then commenced this suit. Defendant claimed the right to possession of the property by virtue of a statutory landlord's lien. Plaintiff claimed the right and title to the property under the resale made to him by Seidler. The facts bring the case clearly within the provisions of section 2118, Gen St., as amended in 1889 (2 Mills' Ann. St. § 2854). The defendant had a lien upon the furniture for the amount due him for rent of room. This he had not waived, nor was there in evidence any payment or tender of payment by plaintiff of the amount of this lien. Plaintiff was not entitled to the possession of the property without first having satisfied the lien of defendant. The judgment in favor of plaintiff was therefore error, and for this it must be reversed.

It also appears from the undisputed evidence that, at the time when Seidler left the house, he agreed with defendant that the furniture should remain in the room until the rent was paid. Defendant was therefore entitled to possession of the furniture even without resorting to a claim of a landlord's lien. This agreement gave him a specific lien for the amount of Seidler's debt, and he was entitled to hold the property as pledgee. There being no written pleadings by which the issues were framed and the parties bound, this court will not avail itself of its power to direct a judgment in favor of defendant. If upon another trial, however, the same facts are substantially shown, it will be the duty of the trial court to render such judgment. The judgment will be reversed, and the cause remanded for a new trial. Reversed.

PEOPLE ex rel. DIX v. KERWIN.

(Court of Appeals of Colorado. Dec. 13, 1897.)

ELECTIONS — NOTICE — POLITICAL PARTIES — COMMITTEES.

1. Where the candidate has received no nomination from a party convention, an election is void, unless notice has been given in compliance with Gen. St. § 1170, which requires the county clerk to give notice, when a county commissioner is to be elected, by publication in a paper for 15 days, and by posting such notice at the various polling places for the same period.

2. In the absence of express authority, the county central committee of a political party has no authority to make a nomination to fill a va-

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cancy caused by the death of an officer who has been duly nominated and elected.

Appeal from district court, Lake county.

Action by the people, on the relation of Andrew N. Dix, against James H. Kerwin. From a judgment sustaining a demurrer to the complaint, relator appeals. Reversed.

John M. Maxwell, for appellant. James Glynn, for appellee.

BISSELL, J. Lake county is divided into five county commissioner districts. On the 25th of October, 1895, Henry Ludwig, who was a member of the board, died. His death created a vacancy. Gov. McIntyre appointed Andrew N. Dix for the unexpired term, and the attempt to elect James H. Kerwin to the office on the 5th of November following led to this contest. The governor made the appointment under the authority conferred by the General Statutes. By section 537 of the statutes of 1883, it is provided that, in case of a vacancy in the office of county commissioner, the governor shall fill it by appointment, and the appointee shall hold the office until the next general election, or until the vacancy is filled by election according to law. It was under this statutory power that the governor appointed Dix. After his appointment, Dix filed his bond, took his oath of office, and attempted to discharge its duties, from doing which he was prevented by the action of the county commissioners, who recognized Kerwin as the legal and legitimate member. Thereupon, on the refusal of the district attorney to act, Dix, on his own motion, filed this relation, and attempted to establish his title to the office. We only have the complaint before us because it was adjudged insufficient on a demurrer, and our statement is based on the allegations of that pleading. Whether, on the framing of an issue, and the introduction of proof, a different question will be presented, we are unable to determine, and our judgment, of necessity, rests solely on the sufficiency of the complaint to state an apparent right to the office. The chief allegation on which the relator bases his rights is one which charges that the clerk failed to give the statutory notice of the election to fill the unexpired term under the general acts relating to elections. The county clerk gave no notice that a county commissioner was to be elected in the particular district by a publication in a paper for 15 days, and posting such notice at the various polling places for the same period. The act which requires it is section 1170 of the General Statutes. The statute is specific, precise, and definite, and requires the notice to be published and posted for that length of time. The demurrer, of course, concedes that that was not done, but there is an attempt to escape its force by the asserted legality of the procedure adopted by the central committee of the People's party of Lake county. On the 26th of October, which was the day following Ludwig's death, this committee, composed of Nicholson and Tucker, who were chairman and secretary, undertook to file with the county clerk and recorder of Lake county a certificate of the nomination of Kerwin. We are unadvised as to whether they were all the members of the committee, or of whom it was composed, or whether there were other members, all of whom concurred in the proceedings taken by the chairman and secretary. In any event, they signed and swore to the certificate, which seems, in its general outlines, to be in conformity with the statutes of 1891 relating to certificates of nomination, providing the committee possessed the power to nominate under those circumstances, and at that time. Acting in accordance with the general directions of the election law, the certificate recited the resolution under which these persons assumed to act. It stated that this resolution was adopted by the People's party convention at its last session, and was, substantially, that the People's party central committee of Lake county was empowered to fill all vacancies that might exist or occur. It was under this authority, if any, that these persons assumed to act. For the purposes of the present appeal, the question suggested by these facts is the only question which we need consider. We are quite of the opinion that this committee was wholly powerless in the premises, that the election was without validity, and that thereby the appellee, Kerwin, took no title to the unexpired term. This conclusion is based on the general hypothesis that the statute contemplates and directs that there shall be some public notice given of elections which are to be held for various public offices, and that this notice is a prerequisite to a valid election unless the particular case under consideration is without the operation of the statute because of what has been antecedently done. It may be quite true that, if the various parties had held conventions, and nominated parties for different offices, and tickets had been regularly and duly printed, and the clerk had failed to give the particular notice required by section 1170, the election might have been valid, notwithstanding the failure. We are not prepared to hold that this statute is, under all circumstances, and at all times, so far mandatory that a failure to observe its requirements will defeat an election otherwise regularly holden. There are many cases which hold that elections regularly held and persons regularly voted for on nominations made, where there has been a failure to observe some specific statutory requirement, will not thereby be necessarily defeated, and the direction may, because of the excusing circumstances, be held directory, rather than mandatory. We do not believe the circumstances of the present case, as they are now exhibited, bring

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it at all within this rule. The theory of elections is that there shall be due notice given to the voters, and that they must be advised, either by a direct notice published by the clerk, as provided by statute, or by proceedings taken by the voters and the people generally in such way as that it may be fairly inferred that it was generally and thoroughly well understood that a particular office was to be filled at the election, so that the voters should act understandingly and intelligently in casting their ballots. This construction of section 1170 is entirely justified by the two sections preceding it, although in the former case there is an absence of the definite provision which exists in the other. According to sections 1168 and 1169, in case of the election of officers for the executive or judicial department, the secretary of state is bound to give 30 days' notice of it, and in the case of a vacancy which is to be filled at the election he must likewise give 30 days' notice. It was evidently the legislative purpose to require these notices to be published to give the voters full information of the offices which are to be filled. These three sections were not repealed by the election act of 1891, nor are there any provisions in that election law, commonly known as the "Australian Election Law," which cover the precise case. According to this law, nominations are to be made in a certain way; certificates are to be filed either by convention, by committees, or on the petition of voters; the tickets are to be printed at the public expense; and sundry notices must be published and posted to cover the various contingencies as they may arise. We are unable to see that the present case is at all brought within the provisions of that act. What would have been the case had the various parties called conventions, and there had been time enough to act so that the electors of the county could be presumed to have had notice, or if the antecedent convention had clothed the county central committee with authority to make certificates of nominations in case of a vacancy in any office, we do not determine. As the case stands on the present record, the committee which assumed to act was entirely powerless in the premises. The authority given to the county central committee, and the cases in which they are authorized by that election law to act, are evidently cases where there have been antecedent nominations by a convention or by conventions, and vacancies have occurred in the nominations thus made, either by death, resignation, or declination. Then the committee can fill them. The resolution of the People's party convention, as contained in the certificate which Nicholson and Tucker signed, was evidently intended only to give them power to act with reference to the nominations made by the convention which passed the resolution. There was no grant of authority to this committee to make a nomination in case of the death of an officer who had been duly nominated and elected, and, being without express authority, there was no implication that these persons represented the People's party for any purpose, or at least for the purpose for which they assumed to act. Lacking this special authority, what they did was entirely nugatory. Since there was no notice published according to the statute, we may not assume that the nomination was regularly made, or that the voters were duly notified that the office was to be filled at that general election, nine days afterwards. It has been generally held that some notice, regular in its form, and pursuant to the requirements of law, must be given as a safeguard to popular elections, that the people may be informed for what officers they are to vote. Of course, it might easily be true, as has already been suggested, that, if nominations had been made for an office, certificates regularly filed, and tickets regularly printed, even though the clerk had failed to publish his notice, there would be no presumption that the body of the voters were uninformed as to their rights and as to the positions which were to be filled. People v. Porter, 6 Cal. 26; Secord v. Foutch, 44 Mich. 89, 6 N. W. 110; Adsit v. Osmun, 84 Mich. 420, 48 N. W. 31; Allen v. Glynn, 17 Colo. 338, 29 Pac. 670; Stephens v. People, 89 Ill. 337.

The force and effect of these suggestions is very apparent from what is exhibited by this record. It would appear that there were no votes cast for any nominees except those of the People's party and of the Democratic party. No other party was represented, and no other party nominated a ticket. It was assumed by the other political organizations that the statutory power conferred upon the governor to appoint a commissioner to fill the vacancy, who should hold office until the general election, or until his successor was duly elected and qualified, covered the precise case, gave the governor power to act, and that his appointment regularly filled the office. How broad and general this impression was we cannot discover. Evidently it had its influence on the voters, and this proceeding would seem to be an irregular one, and an attempt on the part of this self-constituted committee, with no authority, except that which they assumed, to put into the vacant position a person who was not regularly voted for by the people. So far as we can see, this committee did not represent any party nor any convention for the purpose for which they attempted to act, and were no more the representatives of the People's party than the three tailors were the representatives of the people of England. Under the election law of 1891 conventions are given certain powers, and the committees which that convention may appoint are given authority, if the resolution is broad enough for the purpose,

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to file certificates of nomination at certain times and at certain dates, and subject to certain limitations and conditions. Public notice must be given of what has been done by these conventions or committees, and the dates and time of these notices are prescribed. None of these provisions are applicable to the present case. We have been referred to no section which provides for this contingency, and, since it is entirely covered by the General Statutes, which were unrepealed, we must conclude, as we are at present advised, that the appointment by the governor was a legal one, and that there was no valid nomination or election in November, 1895; and the demurrer to the complaint was therefore improperly sustained. The judgment will be reversed. Reversed.

MOYLE v. HOCKING.

(Court of Appeals of Colorado. Dec. 13, 1897.)

APPEAL—REVIEW OF FINDINGS — ACTION FOR SERVICES.

1. The rule that, where evidence is conflicting, appellate courts will not disturb the findings of the trial court, has no application where there was no conflict in the evidence; all of it being against the findings.

2. In an action for services rendered, a prima facie case is made in favor of plaintiff where he shows an employment, at stipulated wages, and the rendition of the services.

3. A court, in making its findings, is not at liberty to disregard unimpeached testimony, where there is nothing to overcome or weaken the force of it.

Error to Gilpin county court.

Action by Nicholas Moyle against Hannah Hocking, administratrix of the estate of Alfred Hocking, deceased. From a judgment for defendant, plaintiff brings error. Reversed.

W. C. Fullerton, for plaintiff in error. J. McD. Livesay, for defendant in error.

WILSON, J. This suit was originally begun before a justice of the peace; hence there are no written pleadings. As we gather from the record, the action was to recover a sum alleged to be due to plaintiff for wages earned by him as a minor while in the employ of Alfred Hocking. The justice rendered judgment in favor of defendant. An appeal was taken to the county court. While suit was there pending, the defendant died, and his administratrix was substituted as a party. Trial to the court was had, and judgment was again rendered for defendant. The principal error assigned is that the finding and judgment were not supported by the evidence.

On the trial, only one witness was produced. He testified that he was present when the defendant, Hocking, employed the plaintiff, heard him agree to pay plaintiff $2.50 per day for his work, and knew that the plaintiff worked 34 days. There was no evidence whatever offered on behalf of defendant. In support of the judgment, defendant relies wholly upon the rule, repeatedly announced and sustained by this court, that, where the evidence is conflicting, appellate courts will not disturb the verdict of the jury or findings of fact by the trial court unless manifestly against the evidence. If sufficient evidence appears to sustain such finding or verdict, it will be conclusively presumed that it was sustained by the weight of the evidence. This rule is well settled, but it is not applicable to the case at bar. Here there was no conflict at all in the evidence. All of it was in favor of plaintiff, and there is none whatever to support the judgment. The employment, at a stipulated rate of wages, and the rendition of the services, having been shown, a prima facie case was made in favor of plaintiff. The burden was then upon defendant to show payment or anything else which might go towards the reduction or extinguishment of the claim. This was not even attempted. Railroad Co. v. Wilson, 4 Colo. App. 356, 36 Pac. 67. There was nothing which tended to overcome or weaken the force of the unimpeached testimony of the one witness as to the contract of employment and performance of the labor, and the trial court was not at liberty to disregard it. Hunt v. Elevator Co., 1 Colo. App. 124, 27 Pac. 873. Some weight is usually to be given to the same result of two trials, but it can have no effect in a case like the one at bar, where there is a total absence of evidence to support the judgment. For this reason, the judgment is reversed, and the cause remanded for a new trial. Reversed.

CITY OF DENVER v. HART et al.

(Court of Appeals of Colorado. Dec. 13, 1897.)

STATUTES IN PARI MATERIA—CONSTRUCTION—COUNTY TREASURER—FEES.

The compensation of the treasurer of Arapahoe county for collecting city taxes for Denver, as required by section 4 of article 6 of its amended charter, enacted March 16, 1885, is fixed by section 7 of the act of April 9, 1885, providing that the fees of a county treasurer in counties of the class within which Arapahoe is included shall be "one and one-fourth per cent. on all moneys received by him for taxes of every kind," though sections 2, 3, and 4 of article 6 of the amended charter define the duties to be performed by various county officers, including the treasurer, to facilitate collection of city taxes, and section 5 authorizes the city council to remunerate said county officers for extra labor imposed, in an amount not exceeding 1 per cent. of the total amount collected.

Appeal from district court, Arapahoe county.

Action by the city of Denver against David W. Hart and others. From a judgment for defendants, plaintiff appeals. Affirmed.

F. A. Williams and G. Q. Richmond, for appellant. Charles H. Toll and Benedict & Phelps, for appellees.

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